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HMRC's provisional guidance on the increase in NMPA to age 57

HMRC have used pension schemes newsletter 136 to set out 'provisional information' on the increase in the normal minimum pension age (NMPA) to age 57 from 6 April 2028 and the new 2028 protected pension age framework.

The increase and protections will be covered in a Finance Bill with final guidance to be provided in the Pensions Tax Manual.

Background

Our FYI dated 9 August 2021 (Protected pension ages and the change in NMPA to age 57 in 2028) provides full details on the background to the change in NMPA and the proposed protected pension age framework to apply from 6 April 2028. This was written following the response to the February 2021 consultation.

When the Finance Bill was published on 4 November 2021 it included a clause to increase the NMPA from age 55 to age 57 from 6 April 2028.

Originally, when the technical consultation about the Finance Bill was published, the draft clause had included a window of time during which individuals could either join or transfer into a scheme which could offer a protected pension age. The window would run until 5 April 2023. The window was shortened and ended at 23:59 on 3 November 2021 (i.e. prior to the publication of the revised Finance Bill on 4 November).

The Treasury Update explained: "Ordinarily this change to a Finance Bill clause would have been announced at Autumn Budget 2021. On this occasion, giving prior notice of the shorter window ahead of its closure on 3 November 2021 could have led to unnecessary turbulence in the pensions market and led to some consumer detriment. Some pension savers could find themselves with poorer outcomes (or even be the victim of a pension scam) if they were rushed by rogue advisors to make a quick transfer in the short time period before the window closed."

Unqualified rights

Whether a protected pension age below age 57 applies depends on the wording of the pension scheme rules at 11 February 2021. HMRC's guidance in newsletter 136 published on 17 January 2022, clarifies that an unqualified right to take benefits applies if they do not need the consent of anyone before they can take their benefits. (The terminology in the clause in the draft Bill refers to 'an actual or prospective right' which reflects the usual terminology in relation to entitlement to benefits under the pensions tax laws.)

A member does not have an unqualified right to take benefits if the pension scheme documentation states that the consent of the trustees or employer is required to take benefits. Even where the trustees (or employer) have always operated their discretion to allow for payment of early benefits (e.g. under a blanket consent approach), there is no unqualified right.

Many scheme rules refer to the NMPA or the legislation (i.e. with references to the Finance Act 2004) and so this would not provide for a protected pension age. Legal advice may, however, be necessary where rules are not straightforward or, for example, where provisions covering members who left pensionable service many years ago have not been clearly amended.

Joining before 4 November 2021

To benefit from the 2028 protected pension age framework that applies in a pension scheme offering an unqualified right to a protected pension age of less than age 57, an individual must have joined or 'made a substantive request to join' on or before 4 November 2021.

HMRC describes a substantive request as 'where a member has made a request to the scheme administrator or scheme manager of their pension scheme on which they are required to take action in relation to the transfer' (i.e. 'an instruction to transfer £X or X% of their pension funds to a named pension scheme').

Block and individual transfers

A block (or bulk) transfer would enable a member to retain their 2028 protected pension age, even if the transfer happens more than 12 months after the members join the receiving scheme.

Members will also be able to retain their 2028 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.

Acknowledgement of transitional issues

HMRC says that they are working on the transitional issues and these will require regulations. The example quoted is a member without a protected pension age who has reached age 55 and has started but not completed the process of taking their pension savings before the change to NMPA on 6 April 2028.

What's next?

Legislation needs to be passed. Guidance will be finalised in the Pensions Tax Manual.

In the meantime, trustees should continue to prepare for the changes in 2028 by:

- ensuring the scheme rules are reviewed to see if a protected pension age below age 57 applies
- considering how they plan to notify members of the increase in NMPA and how this will affect their rights to take benefits from the pension scheme, particularly if they have a 2028 protected pension age
- engaging with their advisers and providers to ensure wording in member portals and retirement planning tools are appropriately changed

2028 may seem a long way away but retirement planning is, by its very nature, a long-term journey. Trustees don't want to be criticised by members for not keeping them up to date with the effects of this change on when they can take their pension savings.

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