



Law Society  
of Scotland

# Consultation response

Increasing the normal minimum pension age:  
consultation on implementation

April 2021



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Pensions Law Sub-committee welcomes the opportunity to respond to *Increasing the normal minimum pension age: consultation on implementation*.<sup>1</sup> We have the following comments to put forward for consideration with additional input from our Equalities and Employment Law Sub-Committees.

## Response to questions

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### **Q1. Are there any specific considerations that should be taken into account regarding the government's proposed framework for the increase to the NMPA?**

The current NMPA will be protected under the proposed framework but will be lost when pension benefits are transferred. While there is an exemption for block transfers (as is the case under the current system) the proposed framework will penalise those wishing to transfer their pensions, which reduces the flexibility which the system is supposed to deliver. It may disincentivise the consolidation of individual small pots and make it difficult to advise people to move their pension pots. This seems to conflict with the government's own policy around flexibility and the general theory of consumer protection and competition in facilitating switching to allow consumers to obtain the best return and to reduce the risk of small pots being forgotten.

Some pension scams have focussed on allowing savers to access funds early. It is possible that the rule change could increase the number of liberation scams.

While there may be a certain logic in changing the NMPA to track the state pension age and reflect the expectation that people will work for longer, it should be recognised that a person's useful working life may be dictated by the industry they work in. There is a risk that those working in certain industries – eg construction – may not be able to continue working and risk being particularly disadvantaged if the pension age is raised. This may be increasingly relevant if the age continues to be increased.

<sup>1</sup> <https://www.gov.uk/government/consultations/increasing-the-normal-minimum-pension-age-consultation-on-implementation>

### ***Equalities implications***

The proposed change will arguably affect those nearing 55 at the 2028 implementation date the most – but the lead-in time to implementation and the increase of only 2 years from the current position are relevant mitigating factors. We note that the people most affected by the change were those who turned 55 after the cut-off date in 2028, and so there must be a clear communication strategy with plenty of notice to make the change clear to anyone who might be considering earlier retirement and allow them to plan financially.

There is insufficient information available to establish whether there may be a disproportionate impact upon any particular protected characteristic group. We suggest that an Equality Impact Assessment should be carried out to establish if any group will be disproportionately impacted – for example is there any particular group which is more likely to retire between the ages of 55-57 and would be required to wait longer to access their retirement benefits as a result of the increase. We further suggest that as part of any Equality Impact Assessment conducted it should specifically consider how an increase in the NMPA could impact upon disabled people who may be unable to access their pension between the age of 55 and 57 through early payment of benefits on health grounds provisions because their disability is not covered by the ill-health provisions of their pension scheme.

### **Q2. Are there any particular issues that the government should consider in the way NMPA is defined in pension scheme rules?**

Pension scheme rules do not always contain a definition of normal minimum pension age; rather, schemes may simply provide that benefits cannot be taken before age 55 except due to ill-health or where the member has a protected pension age as defined in paragraph 22 of Schedule 36 to the Finance Act 2004.

Where normal minimum pension age is defined, it will not always be defined by reference to legislation; rules may simply specify that normal minimum pension age is age 55.

As a result, a change to the definition of NMPA in legislation will not automatically track through to pension scheme rules in all cases. Many pension scheme rules will require specific amendment to reflect any change to the NMPA.

### **Q3. The government proposes that the protected pension age will apply to all the member's benefits under the scheme (if the conditions for a protected pension age are met), not just those benefits built up before 2028. Are there any other alternative options or issues the government should consider around the treatment of accrued and future pension savings?**

The difference in the position between personal and occupational pension schemes should be noted. Under occupational schemes, consent is often required to benefits being taken before normal retirement age, so the member does not have a right to take benefits at an earlier age. In contrast, it is common for personal pension schemes to be structured on the basis that all benefits can be taken at age 55. Where schemes are so structured, all current members will have a right to take benefits at that age under the proposed framework. Very many more employees will have become members of personal pension schemes since the NMPA was last increased, not least due to the introduction of auto-enrolment. As a result, large numbers of individuals will

have a NMPA of 55 protected under the proposed framework. The change as proposed will then disadvantage those who wish to transfer their benefits or who move job and join a new scheme as a result.

**Q4. Are there any issues associated with schemes informing members who meet the conditions of their rights to a protected pension age?**

No comment

**Q5. Are there any circumstances why the increase in NMPA may impact on pension flexibility (which was introduced following the 2014 consultation on “Freedom and Choice in Pensions”)?**

The increase in NMPA will impact on pension flexibility and will conflict with people’s ability to consolidate their pensions and enjoy the benefits of maximum flexibility if they are hoping to retire at an earlier stage.

Pension scheme members may have to transfer their benefits to a different scheme in order to access the pension flexibility introduced following the consultation on Freedom and Choice. That might be because they have safeguarded rights which must first be transferred to a scheme with flexible benefits, or because their current scheme does not offer access to the full range of pension freedoms. Under the proposed framework, individuals who transfer their benefits other than as part of a block transfer would see their NMPA increase from 55 to 57. An individual who currently has the right to take their benefits at 55 and wishes to do so after April 2028 may therefore lose the ability to access the full range of flexibilities at that age.

**Q6. Are there any implications the government should consider by not requiring that all scheme benefits must be crystallised on the same day as a condition for a protected pension age?**

No comment.

**For further information, please contact:**

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