

HMRC

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Normal Minimum Pension Age Transitional Provisions Regulations

I respond on behalf of the Local Government Association (LGA) and the Local Government Pensions Committee (LGPC).

The LGA is a politically led, cross-party membership organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. 316 of the 317 councils in England are members of the LGA. These include district, county, metropolitan and unitary authorities along with London boroughs and the City of London corporation. The 22 Welsh unitary authorities are also in membership via the Welsh Local Government Association (WLGA).

The LGPC is a committee of councillors constituted by the LGA. The LGPC considers policy and technical matters affecting the Local Government Pension Scheme (LGPS).

This response is submitted in the context of the LGPS in England and Wales, and Scotland. The LGPS is one of the largest defined benefit (DB) schemes in the world. In England and Wales there are 22,102 employers, 6.9 million members and assets valued at £402 billion. The scheme is administered locally by 86 administering authorities in England and Wales, and 11 in Scotland.

Yours faithfully



Lorraine Bennett
LGPC Secretary

Comments on the draft Taxation of Pension Schemes (Transitional Provisions) (Amendment) Order 2026

We understand that the draft Order is intended to ensure that certain pension and lump sum payments made on or after 6 April 2028 remain authorised where, as is relevant to the LGPS, the member was aged 55 or 56 on 5 April 2028 and had become entitled to the benefit on or before that date.

Although the draft provisions do not expressly exclude members with a protected pension age, we assume that the transitional protection is not needed where a member can continue to receive the relevant benefits by relying on that protected pension age.

Interaction with LGPS scheme rules

The relevant articles covering scheme pensions, pension commencement lump sums and pension commencement excess lump sums apply by reference to when the member 'becomes entitled' to the benefit.

The meaning of 'becomes entitled' is set out in the Finance Act 2004. The date on which a member becomes entitled for the purposes of the Finance Act 2004 may be later than the pension start date under the LGPS regulations.

There may be cases where a benefit is payable from a date before 6 April 2028 under the LGPS regulations, but the member does not become entitled to the benefit for the purposes of the Finance Act 2004 until after 5 April 2028. If the member is still under age 57, the draft transitional provisions may not authorise the payment.

Government will need to consider this point when amending the LGPS regulations to reflect the increase in normal minimum pension age. LGPS administering authorities will also need to work with members who need to rely on the protections in the draft Order and their employers who may be affected to ensure that all necessary paperwork and decisions are completed in good time, so that the member becomes entitled within the meaning of the Finance Act 2004 before 6 April 2028.

However, there will still be cases where, through no fault of the member, the pension start date under the LGPS regulations is before 6 April 2028, but the entitlement to benefits, for the purpose of the Finance Act 2004, is after 5 April 2028. For example, there may be a delay in the employer providing the relevant pay information to the LGPS administering authority. We therefore recommend that the draft Order is amended to cover such cases.

Scheme pensions and lifetime annuities where the first instalment is made before 6 April 2028

HM Revenue and Customs (HMRC) included the following example in Pension Schemes [HMRC newsletter 180](#):

“Example: pension payments start pre 6 April 2028

A member turns 55 in August 2027 and becomes entitled to a scheme pension, with the first instalment paid in December 2027, at a time when they are above the existing normal minimum pension age of 55. When the normal minimum pension age increases to 57 on 6 April 2028, the member is still only 55, and therefore below the new normal minimum pension age. However, the pension already in payment continues without interruption as an authorised payment, as pension rule 1 under section 165 FA 2004 has been satisfied.

If the same member wishes to start another pension on or after 6 April 2028, they will need to wait until they reach age 57 in August 2029, for it to be an authorised payment, unless a protected pension age or ill-health exception applies.

If a member wishes to crystallise further benefits after 5 April 2028, they must have reached the normal minimum pension age of 57 for those payments to be authorised.”

Condition C in article 43A does not cover these cases because the first payment of the scheme pension or lifetime annuity would have been made before 6 April 2028.

The wording in Pension Schemes Newsletter 180 suggests that HMRC considers there to be no need for the draft Order to cover these cases. HMRC’s view appears to be that pension rule 1 is satisfied when payment of the pension begins and is not reassessed each time a subsequent instalment of the same pension is paid.

However, pension rule 1 states that:

“No payment of pension may be made before the day on which the member reaches normal minimum pension age...”

Read in isolation, this wording could suggest that the condition applies to each payment of the pension. If an instalment is paid before the member reaches the new normal minimum pension age, for example between 6 April 2028 and the member’s 57th birthday, a ‘payment of pension’ would have been made before the member reached

normal minimum pension age.

We would welcome confirmation that HMRC's interpretation is that pension rule 1 is assessed only when the first payment of a particular pension is made and is not reassessed when subsequent instalments of the same pension are paid. We would further welcome confirmation of whether the same principle applies where a member starts to receive a pension using a protected pension age of 50, but subsequently loses that protected pension age before reaching age 55.

Cases not covered by the draft order

We do not believe that the draft Order covers all the cases that it should. The following sections set out the circumstances in which we consider that an authorised payment issue could arise.

Recalculation of a pension in payment where the increased pension is classified as a new scheme pension under the Finance Act 2004

An LGPS pension in payment may need to be recalculated for several reasons, including the correction of an administrative error or the retrospective application of a pay award.

We understand that a recalculation may, depending on the circumstances, either amend the original scheme pension or create an entitlement to a new scheme pension for the purposes of the Finance Act 2004.

If a recalculation completed after 5 April 2028 creates an entitlement to a new scheme pension, draft article 43A does not appear to protect payments of that new scheme pension made before the member reaches age 57.

This is because condition C requires the member to have become entitled to the scheme pension on or before 5 April 2028. The member would not have become entitled to the new scheme pension by that date

Example 1

A member aged 55 takes their LGPS annual pension on 1 April 2027. The member does not have a protected pension age. The annual pension is initially calculated as £10,000.

On 1 May 2028, the annual pension is recalculated and increased by £2,000 a year. The circumstances of the recalculation mean that the additional annual pension of £2,000 is treated as a new scheme pension entitlement for the purposes of the Finance Act 2004.

The member becomes entitled to the new scheme pension after 5 April 2028, so article

43A does not apply to that new scheme pension. In which case, pension rule 1 would not appear to be satisfied in relation to payments of the new scheme pension made before the member reaches age 57.

Recalculation of a pension in payment which results in a further lump sum becoming due

Draft articles 43B and 43C do not expressly cover an additional lump sum paid as a result of a recalculation where the original lump sum was paid on or before 5 April 2028.

The articles also do not appear to cover a new pension commencement lump sum or pension commencement excess lump sum entitlement arising after 5 April 2028.

If the additional amount is treated as part of the original pension commencement lump sum or pension commencement excess lump sum, it is not clear how the normal minimum pension age condition will be satisfied where part of the lump sum was paid before 6 April 2028 and the additional amount is paid after 5 April 2028 but before the member reaches age 57.

The position is similarly unclear if the additional amount is treated as a new pension commencement lump sum or pension commencement excess lump sum. In that case, the member would not have become entitled to the new lump sum on or before 5 April 2028.

Example 2

A member aged 55 takes their LGPS annual pension and lump sum on 1 February 2028. The member does not have a protected pension age. The annual pension is initially calculated as £10,000 and the pension commencement lump sum is initially calculated as £50,000.

On 1 May 2028, the annual pension and lump sum are recalculated. The circumstances of the recalculation mean that the additional benefits are treated as a recalculation of the original scheme pension and pension commencement lump sum. The original pension commencement lump sum needs to be increased by £500.

Because part of the relevant lump sum was paid before 6 April 2028, the condition in article 43B(2)(c) does not appear to be met in relation to the additional £500. That condition requires that no payment of the relevant lump sum was made on or before 5 April 2028.

It is therefore unclear how the normal minimum pension age condition would be satisfied in relation to the additional £500 where it is paid before the member reaches age 57.

Example 3

A member aged 55 takes their LGPS annual pension on 1 April 2027. The member does not have a protected pension age. The annual pension is initially calculated as £10,000.

On 1 May 2028, the annual pension is recalculated and increased by £2,000 a year. The circumstances of the recalculation mean that the additional annual pension of £2,000 is treated as a new scheme pension entitlement for the purposes of the Finance Act 2004.

The member is also entitled to commute part of the additional annual pension for a new pension commencement lump sum.

The member becomes entitled to the new pension commencement lump sum after 5 April 2028. Article 43B therefore does not appear to apply because the member had not become entitled to the relevant lump sum on or before 5 April 2028.

It is therefore unclear how the normal minimum pension age condition would be satisfied if the new pension commencement lump sum is paid before the member reaches age 57.

Supplementary pensions increase

In some cases, an LGPS administering authority is required to pay a supplementary pensions increase lump sum on a pension commencement lump sum or pension commencement excess lump sum that has already been paid.

The supplementary amount will commonly become payable following the next Pensions Increase (Review) Order after the member retires.

We understand that the supplementary amount may be classified as a new pension commencement lump sum or pension commencement excess lump sum.

Draft articles 43B and 43C do not appear to cover a supplementary payment where the member becomes entitled to it after 5 April 2028 and the payment is made before the member reaches age 57.

There may also be an issue with the additional annual pension associated with the supplementary payment if that increase is treated as a new scheme pension entitlement arising after 5 April 2028.

Example 4

A member aged 55 takes their LGPS annual pension and lump sum on 1 February 2028. The member does not have a protected pension age.

Shortly after 10 April 2028, the LGPS administering authority pays a supplementary pensions increase lump sum of £100. The lump sum is classified as a new pension commencement lump sum entitlement. It is paid in connection with the additional annual pension due in respect of pensions increase for the period from 12 April 2027 to 1 February 2028.

The member becomes entitled to the additional annual pension and supplementary pensions increase lump sum on 10 April 2028.

Because the entitlement date is after 5 April 2028, article 43A does not appear to cover the additional pension entitlement and article 43B does not appear to cover the supplementary pensions increase lump sum.

Therefore, payments of the additional annual pension and supplementary lump sum made before the member reaches age 57 could therefore be unauthorised payments.

Pension commencement lump sums paid in instalments

In some cases, an LGPS administering authority may pay a pension commencement lump sum in two or more parts. For example, an initial amount may be paid before the final benefit calculation is completed, with the outstanding balance paid once the final calculation is available.

Where part of the relevant lump sum is paid on or before 5 April 2028 and the balance is paid on or after 6 April 2028, the condition in article 43B(2)(c) does not appear to be met. This is because a payment of the relevant lump sum has already been made on or before 5 April 2028.

We would welcome confirmation of how the normal minimum pension age condition applies to the outstanding balance in these circumstances, particularly where the member was entitled to the full lump sum before 6 April 2028, but the administering authority was unable to pay the full amount by that date.

Comments on article 43D (trivial commutation lump sum)

Article 43D(1) to (3) applies to a trivial commutation lump sum paid on or after 6 April 2028 where:

- the member was aged 55 or 56 on 5 April 2028
- the member had become entitled to the lump sum by that date
- no payment of the lump sum had been made on or before that date.

Section 166(2)(b) of the Finance Act 2004 provides that a person becomes entitled to a

lump sum when they first acquire an actual, rather than a prospective, right to receive it.

Article 43D(4) to (6) separately applies where the member was aged 55 or 56 on 5 April 2028, had become entitled to a trivial commutation lump sum on or before that date and becomes entitled to a further trivial commutation lump sum on or after 6 April 2028. This appears to preserve the member's ability to receive a further trivial commutation lump sum within the applicable commutation period.

We note, however, that the draft Order does not provide corresponding transitional protection for small lump sums paid under regulations 11 or 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009.

It therefore appears that a small lump sum paid under those regulations on or after 6 April 2028 to a member who is then under age 57 could fail to qualify as an authorised payment unless the member has a protected pension age (or the ill health condition is met).

This could include a case where the process for paying the small lump sum was completed before 6 April 2028, but the administering authority did not make the payment until shortly after that date.

In those circumstances, a small lump sum paid after 5 April 2028 to a member aged 55 or 56 who does not have a protected pension age could be treated as an unauthorised payment. However, where the lump sum was instead paid under the trivial commutation lump sum rules, the draft order would protect the payment,

We would welcome confirmation of whether this is the intended policy outcome for small pot payments.