

NHS Pension Scheme: Reduced Lifetime Allowance and Fixed Protection

The standard lifetime allowance (LTA) is reducing to £1.5m from 6 April 2012.

HMRC know that some members may have already built up total pension savings of more than £1.5m or were planning to do so in the belief that the standard LTA would not reduce from the 2010/2011 and 2011/2012 £1.8m level; because of this they have introduced the new 'fixed protection'.

The following information is taken from HMRC's website.

Who can apply for fixed protection?

Fixed protection is available to any member who does not already hold either primary or enhanced protection. Members do not need to have built up pension rights of more than £1.5m to apply for fixed protection.

How do members apply for fixed protection?

Applications must be made directly to HMRC. An application form APSS227 can be found on HMRC's website at: www.hmrc.gov.uk.

Applications received at HMRC after 6 April 2012 will not be accepted. Members will need to make sure HMRC gets their fully completed form by 5 April 2012.

If a member intends to take benefits from their pension scheme between 6 April and 31 July 2012 they should note this on form APSS227. This will help to ensure the member receives their certificate before they take their benefits.

Important note: To apply members **do not** need any form of valuation or information from NHS Pensions.

What is the effect of fixed protection on the LTA?

From 6 April 2012 a member with fixed protection will have their standard LTA 'fixed' at £1.8m, rather than the reduced standard LTA of £1.5m until such time as the standard LTA equals or exceeds £1.8m.

This means that as long as the capital value of a member's NHS benefits plus any benefits taken earlier are not worth more than £1.8m there is no LTA charge on the pension. Where a member has not previously used all their standard LTA the maximum pension commencement lump sum (PCLS) they can take will be the lower of:

- 25% of the available standard LTA set by fixed protection at £1.8m, or
- 25% of the capital value of pension benefits being paid.

This means that if a member has not previously taken any pension benefits and the capital value of benefits being taken are £1.8m or more their maximum PCLS could be £450,000.

When a member with fixed protection takes their benefits

If a member has fixed protection they must enclose the fixed protection certificate with their retirement application form. This will enable NHS Pensions to calculate the correct percentage of LTA used by the pension benefits.

Conditions to retain fixed protection

In order to retain fixed protection a member must not break any of the following HMRC conditions. After 5 April 2012 a member:

- Cannot pay any contributions to a Defined Contribution arrangement,
- Cannot start a new arrangement,
- Cannot have 'benefit accrual',
- Will be subject to restrictions on when and how they can transfer their benefits.

Pension contributions

Where a member has a money purchase pension arrangement, for example Money Purchase AVC's, Personal Pension, Stakeholder Pension, then fixed protection will be lost if a pension contribution is paid into one of these arrangements on or after 6 April 2012. This includes members paying contributions into the NHS AVC Scheme.

Members are able to make further pension contributions to a defined benefits arrangement, such as the NHS Pension Scheme provided they do not have 'benefit accrual' (see below).

Members may continue to contribute to a life assurance policy providing death benefits that started before 6 April 2006.

Starting a new arrangement

If a member joins a new arrangement on or after 6 April 2012 they will lose fixed protection unless the reason for joining the new arrangement is:

- to receive a permitted transfer (see below)
- as part of a retirement-benefit activities compliance exercise, or
- as part of an age-equality compliance exercise.

Where a member starts a new arrangement on or after 6 April 2012 for any other reason fixed protection will be lost at the point the new arrangement starts.

A move under the NHS Pension Scheme Choice exercise from the 1995 section to the 2008 section is not a new arrangement.

Following a pension share order, implemented after 6 April 2012, a pension credit will be a new arrangement and fixed protection will be lost.

Benefit Accrual

Where a member has fixed protection NHS Pensions will not test benefits for benefit accrual. It is a member's responsibility to test for benefit accrual, which can occur at any time during the tax year.

Benefit accrual will occur and fixed protection lost if, from 6 April 2012, the capital value of the NHS benefits increase by more than the 'relevant percentage' at any time during a tax year. The member will lose their fixed protection at the point the relevant percentage was exceeded.

The capital value of NHS benefits is: $20 \times \text{pension} + \text{lump sum}$

The relevant percentage in the NHS Pension Scheme is the percentage by which the consumer prices index (CPI) increased in the year ending in September of the previous tax year. If there is no increase, or a fall in CPI in this period, then the relevant percentage rate is nil.

When carrying out a benefit accrual test during a tax year, the relevant percentage to be used is always by reference to the annual rate, rather than a proportion of it.

For tax year 2012-13 the relevant percentage is 5.2% and applies to increases in pension rights occurring in this tax year.

It is for members to decide on the frequency of the actual test during the tax year based on their own circumstances. If an individual remains an active member of a registered pension scheme HMRC have confirmed they may need to carry out the test more frequently than a deferred member who may test annually, when pensions increase is added to their benefits.

Deferred members

Where a member is deferred, either having previously left or because of opting out, their deferred rights are increased annually, every April, by pensions increase based on CPI. This means that a deferred member should be able to predict the increase in their benefits in the tax year.

HMRC have confirmed that so long as a scheme does not make a change to their rules, which has the effect of increasing the annual rate by which deferred benefits are increased, a member who only has deferred rights should keep fixed protection.

Active members

For active members benefit accrual is less predictable, for example, the increase in pension benefits will depend on any increase to membership, pensionable pay and pension. Therefore if the increase in benefits from one tax year to the next exceeds CPI there will be benefit accrual and fixed protection will be lost.

Opting out of the Scheme

Members should take professional advice on their own individual circumstances if they believe that remaining an active member of the NHS Pension Scheme could cause benefit accrual and a loss of fixed protection.

Where a member decides to opt out of the NHS Pension Scheme, the opt-out applies at the end of the pay period, the month, in which the opt out form SD502 is received by their employer. Therefore members should ensure that their employer receives the SD502 before 31 March 2012.

Once a member opts out of the Scheme they will be treated as a deferred member.

Purchasing additional pension

Members should consider how a future election to purchase additional pension could affect any fixed protection.

Transfers

Members will normally lose fixed protection if they transfer to:

- a scheme that **is** a defined benefit or cash balance scheme.
- a scheme that **is not** a money purchase arrangement under a registered pension scheme or a qualifying recognised overseas pension scheme (QROPS).

Permissible transfers

Members can transfer from the NHS Pension Scheme to the following schemes and retain their fixed protection:

- a qualifying recognised overseas pension scheme (QROPS), and

- a money purchase arrangement under a registered pension scheme - as long as no contributions are paid into the new money purchase arrangement

Loss of fixed protection

A member must tell HMRC if they lose fixed protection. If a member does not notify HMRC within 90 days of the loss they will be liable to financial penalties.

Professional Advice

Decisions about continuing in the NHS Pension Scheme, retirement or leaving the NHS Pension scheme should be taken carefully; while tax is definitely one consideration, it is not the only one. NHS Pensions is unable to provide advice to members on whether they should consider fixed protection and members should consider taking professional financial advice on this matter before making a decision.

Members seeking a financial adviser can obtain more information at: www.unbiased.co.uk. It is advisable for members to check that any company they choose is authorised with the Financial Services Authority at: www.fsa.gov.uk

Further Information

More detailed information can be found at: www.hmrc.gov.uk and members considering applying should carefully read the HMRC information published about fixed protection.

More information, including examples, can be located on the HMRC registered pension scheme manual pages starting at: <http://www.hmrc.gov.uk/manuals/rpsmmanual/RPSM11101500.htm>. HMRC has also published a Pension Schemes Newsletter #50 on fixed protection at: <http://www.hmrc.gov.uk/pensionschemes/newsletter50.pdf>