

NHS Pensions - Lifetime Allowance and Fixed Protection 2012

The standard Lifetime Allowance (LTA) was reduced from £1.8m to £1.5m from the 6 April 2012. HM Revenue & Customs (HMRC) recognise 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 2011/12 £1.8m level and because of this they introduced fixed protection.

Who can apply for fixed protection?

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

For members who already have enhanced, primary protection and or a protected lump sum please see the separate factsheet 'Reduced Lifetime Allowance: How this affects members with Enhanced Protection, Primary Protection and Protected Lump Sum'.

How do I apply for fixed protection?

Applications were made directly to HMRC. An application form APSS227 was available on HMRCs website at www.hmrc.gov.uk

Applications received at HMRC after 6 April 2012 would not have been accepted. Members had to make sure HMRC got their fully completed form by 5 April 2012.

Important note: To apply members **did 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 if you have fixed protection your standard LTA will be '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 your NHS benefits plus any benefits taken earlier are not worth more than £1.8m there is no LTA charge on the pension. If you have not previously used all your standard LTA the maximum pension commencement lump sum (PCLS) you 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 you have not previously taken any pension benefits and the capital value of benefits being taken is £1.8m or more your maximum PCLS could be £450,000.

It is important to note that fixed protection does not give protection from the reduction in the Annual Allowance.

When a member with fixed protection takes their benefits

If you have fixed protection you **must** enclose the fixed protection certificate with your 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 you must not break any of the following HMRC conditions.

After 5 April 2012 you:

- 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

If you have a money purchase pension arrangement, for example Money Purchase AVCs, Personal Pension or Stakeholder Pension, then it is NHS Pensions understanding that 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.

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

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

Starting a new arrangement

If you join any new arrangement on or after 6 April 2012 you 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

If you start 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 new arrangement would include:

- joining National Employment Savings Trust (NEST) and
- following a Pension Share Order, implemented on or after 6 April 2012, a person receiving a Pension Credit

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

Benefit Accrual

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

It is for you 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.

For further information please see the separate note 'Reduced lifetime allowance: Fixed protection and testing for benefit accrual'.

Opting out of the Scheme

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

If you decide to opt out of the NHS Pension Scheme, the opt-out applies at the end of the month in which the opt-out form SD502 is received by your employer.

If you opt out of the Scheme you will be treated as a deferred member and this affects the level of benefits the member is entitled to receive in certain circumstances.

Purchasing additional pension

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

Retirement

If you retire you must provide a copy of your fixed protection certificate to your employer to forward to NHS Pensions. You will be required to declare you have not had benefit accrual up to and including the date of retirement.

Your benefits will then be calculated as normal with the % of LTA used by those benefits being calculated as though the standard LTA was £1.8m. Any increase in benefits due to ill-health retirement will not be included when testing for benefit accrual.

Transfers

You will normally lose fixed protection if you 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

You can transfer from the NHS Pension Scheme to the following schemes and retain your 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

You must tell HMRC if you lose fixed protection. If you do not notify HMRC within 90 days of the loss you will be liable to financial penalties.

Cancelling applications for fixed protection

NHS Pensions has been notified by HMRC that once you have applied for Fixed Protection and it becomes effective on 6 April 2012 you cannot give the protection up. Any queries must be directed to HMRC, NHS Pensions is not in a position to provide any help. HMRCs telephone number is: 0845-600-2622

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 that you check that any company they choose is authorised with the Financial Conduct Authority at: www.fca.org.uk.

Further Information

The above information is NHS Pensions current understanding of the legislation and guidance issued by HMRC.

Full guidance on how fixed protection works can be found in the Registered Pension Schemes Manual (RPSM), on HMRCs website at www.hmrc.gov.uk