
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make modifications for the purposes of applying the correct tax treatment to public service pension schemes which are affected by the rectification of discrimination provisions contained in the Public Service Pensions and Judicial Offices Act 2022 (c. 7) (“PSPJOA 2022”). Modifications are made to enactments in their application in relation to a relevant person under the authority of section 11(2) and (3) of the Finance Act 2022 (c. 3). Authority for the retrospective effect of certain modifications made by these Regulations is provided for by section 11(4)(a) of the Finance Act 2022.

Under the rectification provisions in that Act, pension scheme members (except members of local government schemes) can choose the benefits they will receive or, for members of judicial schemes, the scheme they will receive benefits from, for the relevant remedy period (1st April 2015 to 31st March 2022 or, for Agency schemes (as defined in section 38 of PSPJOA 2022), 1st April 2016 to 31st March 2022). Members of local government schemes will receive an automatic uplift in their benefits in the remedy period (1st April 2015 to 31st March 2022 or, for local government pension schemes in England and Wales, from 1st April 2014) where the remedy applies.

Part 1 provides for citation, commencement, effect and interpretation.

Part 2 contains modifications to the pension tax enactments relevant to the main areas affected: contributions (Chapter 1), annual allowance (Chapter 2), benefits (Chapter 3), lifetime allowance (Chapters 4, 5 and 6) and transfers (Chapter 7).

In relation to contributions to pension schemes, Chapter 1 provides that tax relief is preserved on contributions to a new scheme that is subject to the roll-back of pensionable service to a legacy scheme under section 2 of PSPJOA 2022 (regulation 3).

For the annual allowance tax charge, Chapter 2 contains provisions to achieve parity of tax treatment in respect of pension rights under legacy and new schemes in relation to calculating the allowance and tax charge (regulations 4, 12, 13, 14), liability to, payment of tax and repayment of overpaid tax (regulations 8, 9, 10) and administrative provisions for the scheme administrators of both legacy and new schemes (regulations 5, 6, 7, 11 and 15).

In respect of benefits paid to members (or to their estate after death), the main provisions in Chapter 3 (regulations 16 to 26, 28 and 29) provide that payments of pension and lump sums affected by the rectification provisions in PSPJOA 2022 are treated (in relation to the remedy period) as authorised member payments for tax purposes, even where they would otherwise not meet the conditions (as to timing of payment, for example) for such treatment.

Chapters 4, 5 and 6 contain provisions to preserve the tax treatment for the lifetime allowance charge for legacy and new schemes affected by the rectification provisions, including reporting and payment of the charge (regulations 32, 33), claims for overpayment (regulation 34), liability and discharge (regulations 35, 36) and individual and fixed protection (regulations 37 to 41). Chapter 7 (regulation 43) provides for certain transfers of sums or assets held in a partnership pension account to a Chapter 1 scheme or a judicial scheme to be treated as recognised transfers for the purposes of the pension provisions in the Finance Act 2004 (c. 12).

Part 3 modifies Schedule 15 to the Finance Act 2020 (c. 14) in order to preserve income tax, capital gains tax and inheritance tax treatment for compensation payments made under or by virtue of Part 1 of PSPJOA 2022.

Changes to legislation: There are currently no known outstanding effects for the The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023. (See end of Document for details)

A Tax Information and Impact Note covering section 11 of the Finance Act 2022 (under which this instrument is made) was published on 27th October 2021 alongside the Finance Bill and is available on the website at <https://www.gov.uk/government/publications/taxation-of-public-service-pension-reform-remedy/taxation-of-public-service-pension-reform-remedy>. It remains an accurate summary of the impacts that apply to this instrument.

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