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## STATUTORY INSTRUMENTS

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# 2023 No. 113

## The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023

### PART 2

#### Modifications of Part 4 of the Finance Act 2004

#### CHAPTER 3

#### Benefits

#### **Protected pension age in Chapter 1 legacy scheme unaffected by new scheme benefits election**

**16.**—(1) Paragraph (2) applies for the purposes of determining whether the relevant protected pension age condition is met in relation to an individual and a Chapter 1 legacy scheme.

(2) The effect of any election made in relation to the individual by virtue of section 6 or 10 of PSPJOA 2022 (election for new scheme benefits under Chapter 1 legacy scheme) on the time at which benefits become payable under the scheme is to be ignored.

(3) In this regulation “the relevant protected pension age condition” means the condition in subparagraph (7)(a) of paragraph 22 of Schedule 36 to FA 2004 (protected pension age available under pension scheme<sup>(1)</sup> only if entitlement to all benefits under the scheme arises on the same date)<sup>(2)</sup>.

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#### **Commencement Information**

**II** [Reg. 16](#) in force at 6.4.2023, see [reg. 1\(2\)](#)

#### **Protected pension age in Chapter 1 new scheme unaffected by roll-back**

**17.**—(1) Paragraph (2) applies for the purposes of determining whether the relevant protected pension age condition is met in relation to an individual and a Chapter 1 new scheme.

(2) The effect, in relation to the individual, of section 2(1) of PSPJOA 2022 (roll-back of remediable service to Chapter 1 legacy scheme) on the existence of any actual or prospective right under the scheme immediately before 4 November 2021 is to be ignored.

(3) In this regulation “the relevant protected pension age condition” means the condition in subparagraph (3)(a) of paragraph 23ZB of Schedule 36 to FA 2004 (protected pension age available under pension scheme only if individual has right under scheme immediately before 4 November 2021)<sup>(3)</sup>.

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(1) For the purposes of Part 4 of FA 2004 (c. 12), “pension scheme” is defined in section 150(1) of that Act.

(2) Paragraph 22 of Schedule 36 was relevantly amended by paragraph 54(6) of Schedule 10 to FA 2005 (c. 7) and paragraph 43(2) of Schedule 23 to FA 2006 (c. 25); there are other amendments, but none are relevant.

(3) Paragraph 23ZB of Schedule 36 was inserted by section 10(5) of FA 2022 (c. 3).

**Status:** Point in time view as at 06/04/2023.

**Changes to legislation:** There are currently no known outstanding effects for the The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, CHAPTER 3. (See end of Document for details)

#### Commencement Information

**I2** Reg. 17 in force at 6.4.2023, see [reg. 1\(2\)](#)

#### Pension commencement lump sum: additional lump sum paid to member

**18.**—(1) Paragraph (2) applies where—

- (a) as a result of a relevant rectification provision, an amount by way of lump sum (“the additional lump sum”) has become payable to an individual under a pension scheme, and
- (b) the additional lump sum—
  - (i) is paid to the individual after the end of the period specified in paragraph 1(1)(c) of Schedule 29 to FA 2004 (time period within which pension commencement lump sum(4) must be paid)(5),
  - (ii) could not reasonably have been paid within that period, and
  - (iii) would, if it had been paid within that period, have been a pension commencement lump sum.

(2) The additional lump sum is a pension commencement lump sum.

#### Commencement Information

**I3** Reg. 18 in force at 6.4.2023, see [reg. 1\(2\)](#)

#### Trivial commutation lump sum: lump sum already paid

**19.**—(1) Paragraph (2) applies where—

- (a) an individual has been paid a lump sum which, disregarding the relevant rectification provisions, is a trivial commutation lump sum(6), and
- (b) as a result of the operation of a relevant rectification provision—
  - (i) the condition in paragraph 7(1)(b) of Schedule 29 to FA 2004 (commutation limit)(7) has ceased to be met in relation to the lump sum, or
  - (ii) the condition in paragraph 7(1)(d) of that Schedule (extinguishment of rights) has ceased to be met in relation to the lump sum.

(2) The lump sum is, and is treated as always having been, a trivial commutation lump sum.

#### Commencement Information

**I4** Reg. 19 in force at 6.4.2023, see [reg. 1\(2\)](#)

(4) A “pension commencement lump sum” is defined in paragraph 1 of Schedule 29 to FA 2004.

(5) Paragraph 1 of Schedule 29 was relevantly amended by paragraph 11 of Schedule 20 to FA 2007 (c. 11), paragraph 24 of Schedule 16 to FA 2011 (c. 11), paragraph 21(2) of Schedule 5 to FA 2021 (c. 26), and by S.I. 2006/572; there are other amendments but none are relevant.

(6) A “trivial commutation lump sum” is defined in paragraph 7 of Schedule 29 to FA 2004.

(7) Paragraph 7 of Schedule 29 was relevantly amended by paragraph 29 of Schedule 16 to FA 2011, paragraph 7 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30), paragraph 7 of Schedule 5 to FA 2016 (c. 24), paragraph 21(6) of Schedule 5 to FA 2021, and by S.I. 2006/572; there are other amendments but none are relevant.

### Trivial commutation lump sum: additional lump sum paid to member

- 20.**—(1) Paragraphs (2) to (4) apply where—
- (a) an individual has been paid a trivial commutation lump sum (“the original TCLS”),
  - (b) as a result of a relevant rectification provision, the individual has acquired rights under a registered pension scheme, and
  - (c) the individual is paid a lump sum (“the top-up lump sum”) which, disregarding—
    - (i) paragraph 7(1)(a) of Schedule 29 to FA 2004 (requirement that no previous trivial commutation lump sum has been paid), and
    - (ii) paragraph 7(1)(b) of that Schedule (maximum value on commutation date),would be a trivial commutation lump sum.
- (2) Subject to paragraph (3), the top-up lump sum is to be treated as a trivial commutation lump sum.
- (3) Paragraph (2) does not apply if—
- (a) the top-up lump sum exceeds £10,000, and
  - (b) the aggregate of—
    - (i) the top-up lump sum, and
    - (ii) the value of the individual’s pension rights on the nominated date<sup>(8)</sup> in relation to the original TCLS (as determined under paragraph 7(5) of Schedule 29 to FA 2004),exceeds £30,000.
- (4) Regulation 3 of RPS(AP)R 2009 (commutation payments) does not apply in relation to the top-up lump sum.

#### Commencement Information

**I5** Reg. 20 in force at 6.4.2023, see [reg. 1\(2\)](#)

### Serious ill-health lump sum already paid: status unaffected

- 21.**—(1) Paragraph (2) applies where—
- (a) an individual has been paid a lump sum which, disregarding the relevant rectification provisions, is a serious ill-health lump sum<sup>(9)</sup>, and
  - (b) as a result of the operation of a relevant rectification provision, the condition in paragraph 4(1)(ca) of Schedule 29 to FA 2004 (extinguishment of rights)<sup>(10)</sup> has ceased to be met in relation to the lump sum.
- (2) The lump sum is, and is to be treated as always having been, a serious ill-health lump sum.

#### Commencement Information

**I6** Reg. 21 in force at 6.4.2023, see [reg. 1\(2\)](#)

<sup>(8)</sup> “Nominated date” is defined in paragraph 7(3) of Schedule 29 to FA 2004.

<sup>(9)</sup> “Serious ill-health lump sum” is defined in paragraph 4 of Schedule 29 to FA 2004.

<sup>(10)</sup> Sub-paragraph (1)(ca) of paragraph 4 of Schedule 29 was substituted by paragraph 5(4) of Schedule 5 to FA 2016. Paragraph 4 was also relevantly amended by paragraph 28 of Schedule 16 to FA 2011 and paragraph 5(4) of Schedule 5 to FA 2016; there are other amendments but none are relevant.

*Status: Point in time view as at 06/04/2023.*

*Changes to legislation: There are currently no known outstanding effects for the The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, CHAPTER 3. (See end of Document for details)*

### Serious ill-health lump sum: additional lump sum paid to member

22.—(1) Paragraphs (2) and (3) apply where—

- (a) an individual has been paid a serious ill-health lump sum in respect of an arrangement<sup>(11)</sup>,
- (b) as a result of a relevant rectification provision, the individual has acquired rights under the arrangement (“the retrospective entitlement”),
- (c) the individual is paid a lump sum (“the top-up SIHLS”) in respect of that arrangement which, disregarding paragraph 4(1)(ca) of Schedule 29 to FA 2004 (requirement that lump sum extinguish uncrystallised rights), would be a serious ill-health lump sum in respect of that arrangement, and
- (d) the top-up SIHLS extinguishes the retrospective entitlement.

(2) The top-up SIHLS is to be treated as a serious ill-health lump sum.

(3) Regulation 3 of RPS(AP)R 2009 (commutation payments) does not apply in relation to the payment.

#### Commencement Information

**I7** [Reg. 22](#) in force at 6.4.2023, see [reg. 1\(2\)](#)

### Scheme pension: additional scheme pension paid in respect of deceased member

23.—(1) Paragraphs (2) and (3) apply where—

- (a) as a result of a relevant rectification provision, an amount or amounts by way of scheme pension<sup>(12)</sup> (“the scheme pension arrears”) have become payable to a member (“P”) or to P’s personal representatives,
- (b) P dies without having been paid the scheme pension arrears, and
- (c) the scheme pension arrears are paid instead to P’s personal representatives.

(2) The payment—

- (a) is to be treated as falling within section 164(1) of FA 2004 (authorised member payments)<sup>(13)</sup>;
- (b) is to be treated as pension paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003<sup>(14)</sup>;
- (c) is to be treated for those purposes as pension accruing in the tax year in which it is paid.

(3) Regulation 4 of RPS(AP)R 2009 (pension errors) does not apply in relation to the payment.

#### Commencement Information

**I8** [Reg. 23](#) in force at 6.4.2023, see [reg. 1\(2\)](#)

<sup>(11)</sup> For the purposes of Part 4 of FA 2004, “arrangement” is defined in section 152(1) of that Act.

<sup>(12)</sup> For the purposes of Part 4 of FA 2004, “scheme pension” is defined in paragraph 2 of Schedule 28 to that Act.

<sup>(13)</sup> Section 164(1) of FA 2004 was re-numbered by paragraph 1(2) of Schedule 29 to FA 2008 (c. 9) and amended by paragraph 6 of Schedule 23 to FA 2006.

<sup>(14)</sup> 2003 c. 1. “ITEPA 2003” is defined as the Income Tax (Earnings and Pensions) Act 2003 (c. 1) by section 103 of FA 2022. Chapter 5A (applying to pensions paid under a registered pension scheme) was inserted into Part 9 of ITEPA 2003 by paragraph 6 of Schedule 36 to FA 2004. It was relevantly amended by: paragraph 22 of Schedule 16 to FA 2011, paragraph 117 of Schedule 45 to FA 2013 (c. 29), paragraphs 81 and 82 of Schedule 1, and paragraph 25 of Schedule 2, to the Taxation of Pensions Act 2014, paragraph 23 of Schedule 4 to FA 2015 (c. 11) and section 22(6) and (7) of F(No. 2)A 2015 (c. 33).

### Pension commencement lump sum: additional lump sum paid for deceased member

- 24.—(1) Paragraphs (2) to (5) apply where—
- (a) as a result of a relevant rectification provision, an amount by way of lump sum (“the additional lump sum”) has become payable to a member (“P”), or to P’s personal representatives, under a pension scheme,
  - (b) the additional lump sum would have been a pension commencement lump sum if it had been paid to P within the period specified in paragraph 1(1)(c) of Schedule 29 to FA 2004 (time period within which pension commencement lump sum must be paid),
  - (c) P dies without having been paid the additional lump sum, and
  - (d) the additional lump sum is paid to P’s personal representatives.
- (2) The payment—
- (a) is to be treated as falling within section 164(1) of FA 2004 (authorised member payments);
  - (b) is to be treated as a pension commencement lump sum paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003(15).
- (3) The making of the payment is to be treated as a benefit crystallisation event(16) in relation to P for the purposes of the lifetime allowance charge(17).
- (4) The amount crystallised for the purposes of that benefit crystallisation event is the amount of the payment.
- (5) Regulation 5 of RPS(AP)R 2009 (lump sum errors) does not apply in relation to the payment.

#### Commencement Information

19 Reg. 24 in force at 6.4.2023, see [reg. 1\(2\)](#)

### Trivial commutation lump sum: additional lump sum paid for deceased member

- 25.—(1) Paragraphs (2) to (5) apply where—
- (a) an individual (“P”) has been paid a trivial commutation lump sum (“the original TCLS”);
  - (b) as a result of a relevant rectification provision P, or P’s personal representatives, have acquired rights under a registered pension scheme,
  - (c) P dies without having received benefits in respect of the rights,
  - (d) a lump sum (“the top-up lump sum”) is paid to P’s personal representatives, and
  - (e) the top-up lump sum would have been a trivial commutation lump sum if—
    - (i) P had still been living when it was paid, and
    - (ii) it had been paid to P.
- (2) In determining whether the condition in paragraph (1)(e) is met, the following provisions of paragraph 7 of Schedule 29 to FA 2004 (trivial commutation lump sum) are to be disregarded—

(15) Chapter 15A (applying to lump sums paid under registered pension schemes) was inserted into Part 9 of ITEPA 2003 by paragraph 11 of Schedule 31 to FA 2004. Section 636A (relating to exemptions for certain lump sums including pension commencement lump sums) was inserted by paragraph 11 of Schedule 31 to FA 2004, and was amended by paragraph 28 of Schedule 19, and Part 3 of Schedule 27, to FA 2007, paragraph 42 of Schedule 16 to FA 2011, paragraph 5(3) of Schedule 5 to FA 2014 (c. 26), paragraph 62 of Schedule 1, and paragraph 19 of Schedule 2, to the Taxation of Pensions Act 2014, section 22(2) to (4) of F(No. 2)A 2015, paragraph 2 of Schedule 5 to FA 2016, and by [S.I. 2006/569](#).

(16) Section 216 of FA 2004 sets out the events which are benefit crystallisation events in relation to an individual, and the amount which is crystallised by each of those events.

(17) Section 214 of FA 2004 sets out when the lifetime allowance charge will arise in relation to a benefit crystallisation event.

**Status:** Point in time view as at 06/04/2023.

**Changes to legislation:** There are currently no known outstanding effects for the The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, CHAPTER 3. (See end of Document for details)

- (a) sub-paragraph (1)(a) (requirement that no previous trivial commutation lump sum has been paid), and
  - (b) sub-paragraph (1)(b) (maximum value on nominated date).
- (3) Subject to paragraph (4), the top-up lump sum is to be treated as a trivial commutation lump sum.
- (4) Paragraph (3) does not apply if—
- (a) the top-up lump sum exceeds £10,000, and
  - (b) the aggregate of—
    - (i) the top-up lump sum, and
    - (ii) the value of the individual’s pension rights on the nominated date in relation to the original TCLS (as determined under paragraph 7(5) of Schedule 29 to FA 2004), exceeds £30,000.
- (5) Regulation 3 of RPS(AP)R 2009 (commutation payments) does not apply in relation to the top-up lump sum.

#### Commencement Information

**I10** Reg. 25 in force at 6.4.2023, see [reg. 1\(2\)](#)

#### Serious ill-health lump sum: additional lump sum paid for deceased member

- 26.**—(1) Paragraphs (2) to (6) apply where—
- (a) an individual (“P”) has been paid a serious ill-health lump sum in respect of an arrangement,
  - (b) as a result of a relevant rectification provision P, or P’s personal representatives, have acquired rights under the arrangement (“the retrospective entitlement”),
  - (c) P dies without having received benefits in respect of the retrospective entitlement,
  - (d) a lump sum (“the top-up SIHLS”) is paid to P’s personal representatives at a time at which some of P’s lifetime allowance<sup>(18)</sup> is available, and
  - (e) the top-up SIHLS extinguishes the retrospective entitlement.
- (2) The payment—
- (a) is to be treated as falling within section 164(1) of FA 2004 (authorised member payments);
  - (b) is to be treated as a serious ill-health lump sum paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003.
- (3) The making of the payment is to be treated as a benefit crystallisation event in relation to P for the purposes of the lifetime allowance charge.
- (4) The amount crystallised for the purposes of that benefit crystallisation event is the amount of the payment.
- (5) Any lifetime allowance charge arising as a result of that benefit crystallisation event is to be charged at the rate of 55%.
- (6) Regulation 3 of RPS(AP)R 2009 (commutation payments) does not apply in relation to the payment.

<sup>(18)</sup> Section 218 of FA 2004 defines what is meant by “lifetime allowance” for the purposes of Part 4 of that Act.

**Commencement Information**

**I11** Reg. 26 in force at 6.4.2023, see **reg. 1(2)**

**Recovery of underpaid lifetime allowance charge by reduction of scheme pension**

**27.**—(1) Paragraph (3) applies where—

- (a) an individual (“P”) has become entitled to a scheme pension,
- (b) in a subsequent tax year, as a result of a relevant rectification provision—
  - (i) a lifetime allowance charge retrospectively arises in respect of the benefit crystallisation event mentioned in sub-paragraph (a), or
  - (ii) the amount of a lifetime allowance charge that arose in respect of that benefit crystallisation event retrospectively increases,
- (c) the scheme administrator<sup>(19)</sup> of the scheme under which the scheme pension is payable pays the new charge or (as the case may be) the increase in the charge, and
- (d) as a result of that payment, the rate of the scheme pension payable to P reduces.

(2) Paragraph (3) also applies where—

- (a) an individual (“P”) has become entitled to a scheme pension,
- (b) the scheme administrator of the scheme under which the scheme pension is payable pays a liability arising under regulation 36 (liability for lifetime allowance charge where private sector scheme discharged from liability), and
- (c) as a result of that payment, the rate of the scheme pension payable to P reduces.

(3) The reduction of the rate of the scheme pension does not prevent the scheme pension satisfying the condition in paragraph 2(3) of Schedule 28 to FA 2004 (requirement that rate of scheme pension does not reduce)<sup>(20)</sup>.

**Commencement Information**

**I12** Reg. 27 in force at 6.4.2023, see **reg. 1(2)**

**Scheme pension already paid: status of overpaid amount unaffected**

**28.**—(1) Paragraph (2) applies where—

- (a) an individual has at any time become entitled to a scheme pension, and
- (b) at a later time, as a result of a relevant rectification provision, one or more payments of scheme pension made to the individual before the later time include amounts (“overpaid pension amounts”) to which the individual was not entitled.

(2) The payments of overpaid pension amounts—

- (a) are to be treated as falling, and are to be treated as always having fallen, within section 164(1) of FA 2004 (authorised member payments);

<sup>(19)</sup> For the purposes of Part 4 of FA 2004, “scheme administrator” must be construed in accordance with section 270 of that Act (but see also sections 271 to 274).

<sup>(20)</sup> Paragraph 2 of Schedule 28 was amended by paragraph 11 of Schedule 10 to FA 2005, paragraph 20 of Schedule 23 to FA 2006, paragraph 7 of Schedule 20 to FA 2007, section 51(2) of FA 2013, section 20 of FA 2016, paragraph 20 of Schedule 5 to FA 2021, and by [S.I. 2007/493](#).



**Status:** Point in time view as at 06/04/2023.

**Changes to legislation:** There are currently no known outstanding effects for the The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, CHAPTER 3. (See end of Document for details)

- (b) are to be treated as, and are to be treated as always having been, pension paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003;
- (c) are to be treated for those purposes as, and are to be treated as always having been, pension accruing in the tax year in which they are paid.

#### Commencement Information

**I13** [Reg. 28](#) in force at 6.4.2023, see [reg. 1\(2\)](#)

### Pension commencement lump sum already paid: status of overpaid amount unaffected

**29.**—(1) Paragraph (2) applies where—

- (a) an individual has at any time been paid a pension commencement lump sum, and
- (b) as a result of a relevant rectification provision, the payment includes an amount (“the overpaid lump sum amount”) which (disregarding this regulation) has ceased to be a pension commencement lump sum.

(2) The overpaid lump sum amount is to be treated as, and is to be treated as always having been, a pension commencement lump sum.

#### Commencement Information

**I14** [Reg. 29](#) in force at 6.4.2023, see [reg. 1\(2\)](#)

### Pension commencement lump sum already paid: repayment of overpaid amount

**30.**—(1) Paragraph (2) applies where—

- (a) an individual has at any time been paid a pension commencement lump sum under a Chapter 1 scheme or a judicial scheme,
- (b) the payment includes an amount (“the overpayment”) which, as a result of a relevant rectification provision, was not payable to the individual, and
- (c) the liability under section 14(5) or 51(4) of PSPJOA 2022 owed to the scheme in respect of the overpayment has been discharged in full.

(2) The amount crystallised by the benefit crystallisation event in connection with the individual’s entitlement to the pension commencement lump sum is to be treated as not including, and is to be treated as never having included, the overpayment.

#### Commencement Information

**I15** [Reg. 30](#) in force at 6.4.2023, see [reg. 1\(2\)](#)

### Top-up defined benefits lump sum death benefit treated in same way as original payment

**31.**—(1) Paragraph (2) applies where—

- (a) a defined benefits lump sum death benefit<sup>(21)</sup> is at any time paid under a registered pension scheme in respect of the death of an individual,

(21) For the purposes of Part 4 of FA 2004, “defined benefits lump sum death benefit” is defined in paragraph 13 of Schedule 29 to that Act.



- (b) the payment is made before the end of the relevant two-year period,
  - (c) as a result of a relevant rectification provision the amount of the defined benefits lump sum death benefit payable under the scheme in respect of the death increases,
  - (d) an amount (“the top-up DBLSDB”) is paid in respect of the increase, and
  - (e) the top-up DBLSDB is not paid before the end of the relevant two-year period.
- (2) The top-up DBLSDB is to be treated for the purposes of the provisions listed in paragraph (3) as having been paid before the end of the relevant two-year period.
- (3) The provisions referred to in paragraph (2) are—
- (a) section 636AA(3) of ITEPA 2003 (circumstances in which payment of defined benefits lump sum death benefit is taxable)(**22**);
  - (b) section 206(1B) of FA 2004 (circumstances in which payment of defined benefits lump sum death benefit is subject to the special lump sum death benefits charge)(**23**);
  - (c) paragraph 16(a) of Schedule 32 to FA 2004 (circumstances in which payment of defined benefits lump sum death benefit constitutes a benefit crystallisation event 7)(**24**).
- (4) In this regulation “the relevant two-year period” means the period of two years beginning with the earlier of the day on which the scheme administrator of the scheme first knew of the individual’s death and the day on which the scheme administrator could first reasonably have been expected to have known of it.

**Commencement Information**

**I16** Reg. 31 in force at 6.4.2023, see **reg. 1(2)**

(22) Section 636AA was inserted by section 22(5) of F(No. 2)A 2015.

(23) Section 206(1B) was inserted by paragraph 17 of Schedule 2 to the Taxation of Pensions Act 2014 and amended by section 21 of F(No. 2)A 2015.

(24) Paragraph 16(a) was amended by section 21(7) of F(No. 2)A 2015.

**Status:**

Point in time view as at 06/04/2023.

**Changes to legislation:**

There are currently no known outstanding effects for the The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023, CHAPTER 3.