

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. 6)
REGULATIONS 2023

2023 No. 823

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes provision about National Insurance contributions (NICs) in consequence of the changes arising from the retrospective 2015 public service pension reforms remedy, set out in Part 1 of the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA). The instrument disregards from earnings any compensation payments made under Part 1 of the PSPJOA in order to exempt them from NICs.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 Section 3(2) and (3) of the Social Security Contributions and Benefits Act 1992, and section 3(2) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 contain a regulation-making power to establish the basis on which the amount of earnings shall be calculated, and that payments of a particular class or description can be disregarded from that calculation. In accordance with those sections this instrument is made with the concurrence of the Secretary of State and the Department for Communities (Northern Ireland).
- 6.2 Part 6 of Schedule 3 to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions) specifies the pension payments and pension contributions to be disregarded for the purposes of establishing liability to pay Class 1 NICs.

6.3 This instrument amends Part 6 of Schedule 3 to the Social Security (Contributions) Regulations 2001.

7. Policy background

What is being done and why?

7.1 On 23 March 2021, the government announced its intention to make technical updates to pension tax rules to address anomalies that were identified as part of finalising the remedy to the age discrimination found in litigation on the 2015 public service pension reforms (commonly referred to as ‘McCloud’).

7.2 Pension tax legislation provides an individual with tax relief on their pension saving in the current tax year and generally does not allow for changes to pension saving in earlier tax years. However, the remedy set out in the PSPJOA makes retrospective changes to the public service pension provision, creating tax anomalies in relation to that provision.

7.3 The Public Service Pensions Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 S.I. (2023/113) provides for a number of technical updates to pensions legislation and includes a provision that exempts compensation payable under the PSPJOA from income tax.

7.4 To ensure the policy intention of the government is achieved, with respect to rectifying the unlawful discrimination suffered by members of public service pension schemes, this instrument mirrors the income tax exemption and provides an exemption from NICs for compensation payments payable under the PSPJOA.

8. Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 As this instrument does not change the substance of the regulations, there is no plan to consolidate.

10. Consultation outcome

10.1 No formal consultation exercise has been held as these are minor changes which are wholly relieving to the taxpayer.

11. Guidance

11.1 Guidance on this measure will be published by 1 October 2023.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument was published on 27 October 2021 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.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that it will be monitored through communications with public service pension schemes and taxpayer groups.

14.2 The instrument does not include a statutory review clause because it relates to tax and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Ativie Edebiri at the HMRC Telephone: 0300 584748 or email: ativie.edebiri@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance, at the HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Andrew Griffith MP, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.