EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of the Public Service Pensions and Judicial Offices Act 2022 ("PSPJOA 2022") rectifies unlawful discrimination suffered by members of affected public service pension schemes. Part 1 of PSPJOA 2022 made separate provision for individuals, depending upon whether they were a member of a "Chapter 1 scheme" (public service pension schemes other than judicial schemes and local government schemes), a "Chapter 2 scheme" (judicial pension schemes) or a "Chapter 3 scheme" (local government pension schemes).

The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (S.I. 2023/113) ("the 2023 Regulations") made various modifications to enactments for the purpose of applying the correct tax treatment to public service pension schemes which are affected by the rectification of discrimination provisions contained in PSPJOA 2022. Parts 2 to 5 of these Regulations make further such modifications to enactments in their application to a relevant person using the powers contained in section 11(1) and (2) of the Finance Act 2022 ("FA 2022"). The retrospective effect of certain modifications made by these Regulations is provided for by section 11(4)(a) of FA 2022.

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

Part 2 makes provision about the annual allowance. It contains provisions to calculate the pension input amount of an arrangement in a pension scheme correctly in certain scenarios, including where voluntary contribution rights have been varied, or extinguished and recreated, whether or not a new scheme benefits election has been made (regulations 3 and 4), and where pension debits and pension credits in respect of a Chapter 1 scheme or judicial scheme are affected by provision made under section 19(1) or 57(1) of PSPJOA 2022 (regulation 6). Regulation 5 provides that if an individual is paid an additional pension commencement lump sum in respect of recreated or varied voluntary contribution rights this will be treated as an unauthorised payment. Regulation 7 sets out how to calculate the pension input amount of an arrangement under a Chapter 1 legacy scheme where there has been an inward transfer of partnership pension account ("PPA") rights into the Chapter 1 legacy scheme, followed by an extinguishment of those rights and creation of rights in the legacy scheme which are equivalent to those that the member would have accrued in that scheme if they had not been a PPA member.

Part 3 makes provision about benefits paid to members (or to their estate after death). It sets out the correct tax treatment of certain additional payments made by public service pension schemes as a result of the remedy, in order to preserve the position for the lifetime allowance charge and other tax charges. Provision is made about:

- certain payments already made, such as small pot lump sums (regulation 8) and trivial commutation lump sum death benefits (regulation 10); small pot lump sums paid following a member's death (regulation 9); and lifetime allowance excess lump sums in respect of which certain conditions have ceased to be met (regulation 16);
- arrears of dependants' scheme pension due whilst the pension is in payment (regulation 11);
- reductions of scheme pensions where a pension credit is adjusted (regulation 12), where the rate of pension is reduced due to the variation or extinguishment of rights to additional benefits (regulation 13), or where a local government scheme pension has been reduced as a result of provision made under section 78(1) of PSPJOA 2022 (regulation 14); and

— repayments of overpaid lump sum death benefits, lifetime allowance lump sums and lump sum unauthorised payments (regulations 15, 17 and 19), and provision about a case where the age of an member may affect their entitlement to a retrospective lifetime allowance excess lump sum (regulation 18).

Part 4 makes provision about the scheme sanction charge. Regulation 20 provides that overpayments of the scheme sanction charge to schemes may only be repaid by His Majesty's Revenue and Customs ("HMRC") on the making of an application, and sets out what should be included in that application.

Part 5 makes various minor amendments to the 2023 Regulations.

Part 6 makes provision in connection with the administration of certain income tax charges relating to pension schemes which arise under Part 4 of the Finance Act 2004 ("FA 2004") ("the relevant pension tax charges") – namely the annual allowance charge, the lifetime allowance charge, the unauthorised payments charge and the unauthorised payments surcharge – for the tax years from 2019-20 to 2022-23 inclusive ("the relevant tax years"), where those charges arise in relation to a relevant person (within the meaning given in section 11(3) of FA 2022) or have been affected by the operation of a provision of, an election made under, or provision made under, Part 1 of PSPJOA 2022 ("a relevant rectification provision") or the operation of regulation 14 of the 2023 Regulations.

Chapter 1 of Part 6 (introductory) contains various definitions which only apply to that Part (see regulation 30).

Chapter 2 relates to specified information. Regulation 31 requires the provision of specified information to HMRC by, or on behalf of, specified individuals about relevant pension tax charges in respect of certain relevant tax years falling within regulation 31(4). This obligation applies to individuals who are active, deferred, pensioner or deceased members of Chapter 1, judicial or local government pension schemes. Information about a specified individual who is a deceased member of a scheme must be supplied by the individual's assessable representative (as defined in regulation 30). Details of the specified information which needs to be provided in relation to the individual and to each of the relevant pension tax charges is set out in the Table in the Schedule. The due date by which specified information is to be provided by, or in respect of, particular individuals is set out in regulation 32.

Regulation 33 requires the preservation of documents in the specified individual's possession related to the specified information for a period of 4 years beginning with the due date for information. This requirement also operates in relation to personal representatives, and is subject to the same penalty as the equivalent requirement in section 12B of the Taxes Management Act 1970 (c. 9).

Chapter 3 relates to assessments. Regulation 34 provides for a power to assess which may be exercised by an officer of HMRC in relation to a specified individual, or their assessable representative, if the officer considers that a specified individual is liable in a relevant tax year to a relevant pension tax charge, or to such a charge in an increased amount. Regulation 34 also clarifies that an officer of HMRC is able to make more than one assessment on the same specified individual, or representative, in respect of the same tax year, regardless of whether or not any earlier assessment for that tax year has been withdrawn previously. Regulation 35 sets the time limits within which such an assessment may be made for individuals in various categories. Regulation 36 provides for a power for HMRC to withdraw an assessment issued under regulation 34 or regulation 39 by giving a notice. An assessment which has been withdrawn under regulation 36 ceases to have effect and is taken as never having had any effect.

Chapter 4 relates to repayments. Regulation 37 provides that specified individuals (or their personal representative) will be entitled to the repayment of overpayments of relevant pension tax charges on the making of an application to HMRC by or in respect of a specified individual ("a repayment application"). Regulation 38 sets out the procedure which must be followed for a repayment application, including the information to be provided, declarations which must be made by the applicant and time limits within which the application can be made.

Chapter 5 relates to recovery of overpayments. Regulation 39 provides for an assessment power which may be exercised by an officer of HMRC if they consider that an amount of an overpayment of a relevant pension tax charge should not have been repaid to a specified individual or to their assessable representative. The time limit for such an assessment is provided for by regulation 39(2).

Chapter 6 relates to penalties. Regulation 40 applies Schedule 24 to the Finance Act 2007 (penalties for errors) to specified information provided to HMRC under regulation 31, and also disapplies the penalty in section 264 of FA 2004 (false statements etc) in relation to that information.

Chapter 7 contains certain modifications to primary legislation which are relevant to the operation of Part 6. Regulation 41 modifies the application of various provisions of the Taxes Management Act 1970 in relation to information provided to HMRC or required under these Regulations. Regulation 42 applies and modifies various provisions of the Finance Act 2009, relating to late payment interest, repayment interest and penalties for a failure to make a return, to information required by, or income tax assessed and overpayments under, these Regulations. Regulation 43 applies the rules about electronic communications in the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282) to the making or withdrawal of assessments, the grant or refusal of repayment applications, the making of payments and repayments and the provision of specified information by taxpayers under the provisions of these Regulations.

A Tax Information and Impact note covering section 11 of FA 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/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.