



HM Revenue  
& Customs

# Public Service Pensions Remedy

## Tax regulations consultation

June 2023

# Consultation from 22 May to 19 June 2023

- The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023 were published for consultation on 22 May 2023
- The consultation ends at **23.59 on 19 June 2023**

# Structure of regulations

- Regulations are spit into Parts:

Part 1	Make changes in a similar way to the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (S.I. 2023/113) so that the tax outcomes of the remedy for members are, as far as possible, the same as if the discrimination had never occurred
Part 2	
Part 3	
Part 4	
Part 5	
Part 6	Provides a special new format for changes made as a result of the remedy to <ul style="list-style-type: none"><li>• annual allowance (AA) charges</li><li>• lifetime allowance (LTA) charges</li><li>• unauthorised payments charges and</li><li>• unauthorised payments surcharge</li></ul> in four specific tax years (2019-20 to 2022-23) by taking changes for these years out of the existing income tax regime



# What the regulations cover

- Member voluntary contributions
- Pension-sharing on divorce debits and credits
- Rights transferred from Partnership Pension Accounts
- Tax treatment of benefit payments
- Approach for changes to scheme sanction charges
- Consequential amendments to S.I. 2023/113
- New special format for administering the Remedy and how these apply to:
  - AA charges
  - LTA charges
  - unauthorised payments charges
  - unauthorised payments surcharges



# PART 1 – Introductory

- Sets out when the regulations will take effect and provides definitions used in the regulations

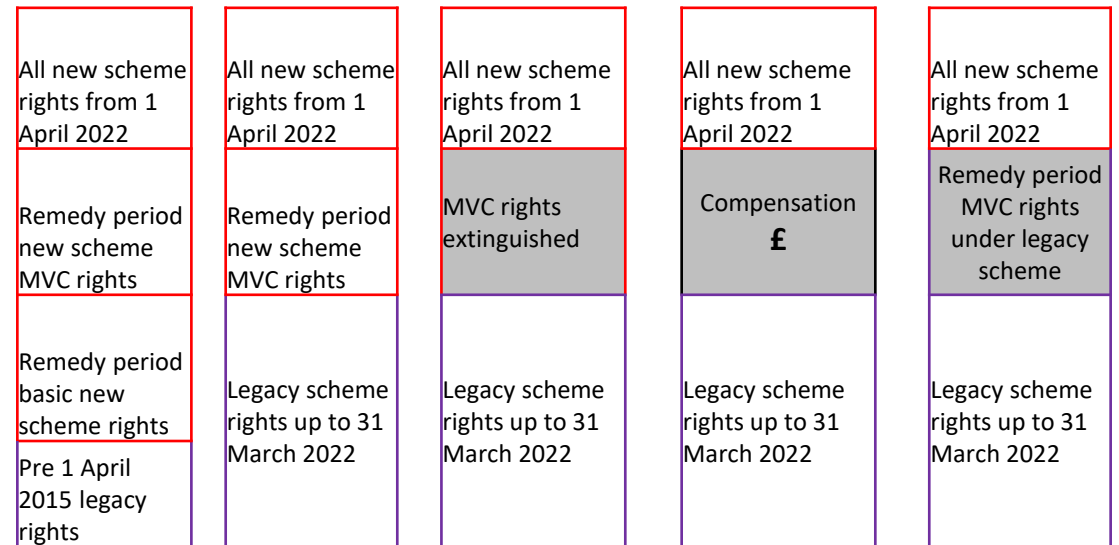
# PART 2 – Annual allowance

- Sets out where pension input amount calculations differ from normal for:
  - member voluntary contributions in relation to Chapter 1 schemes (regulations 3 and 4)
  - pension credits and pension debits as a result of pension-sharing on divorce orders in relation to Chapter 1 and Chapter 2 schemes (regulation 5)
  - inward transfers of partnership pension account (PPA) rights in relation to Chapter 1 schemes (regulation 6)

# Member voluntary contributions

## Regulation 3

- MVCs under a Chapter 1 new scheme do not rollback with the basic service
- Scheme regulations provide for MVC rights to be extinguished and:
  - legacy scheme replacement:
    - MVC rights based on the contributions paid to the new scheme
    - equivalent value MVC rights to value in the new scheme, or
  - pay compensation to the member



# Member voluntary contributions

## Regulation 3

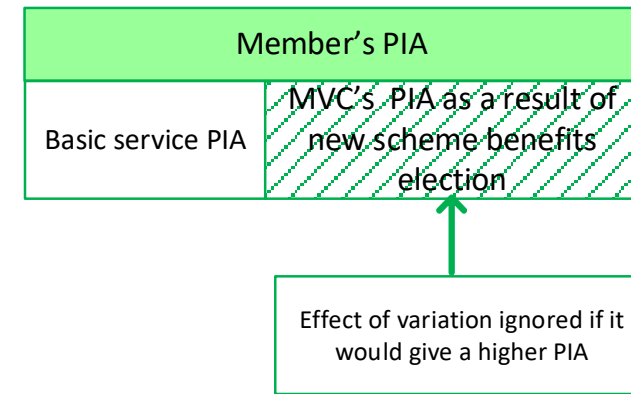
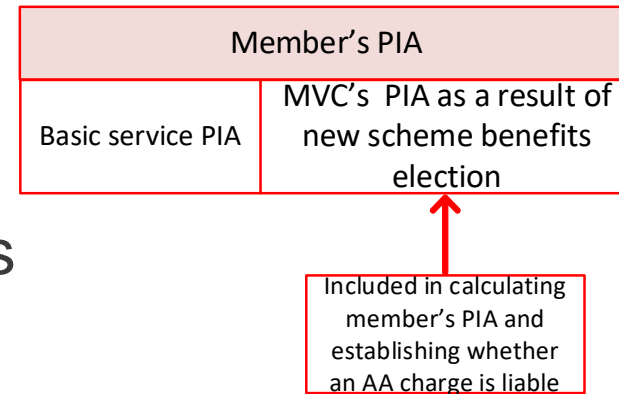
Regulation	Scheme	What the Regulation achieves
3	1	<p>In the pension input period when MVC rights in a Chapter 1 new scheme are extinguished (under scheme regulations made under section 20 PSPJOA) when calculating pension input amounts</p> <ul style="list-style-type: none"><li>• <b>Ignore</b> extinguishing of MVC rights in that <b>new scheme</b></li><li>• <b>Ignore</b> replacement MVC rights in the legacy scheme if the MVC rights in the new scheme were for <b>added pension</b></li><li>• <b>Include</b> replacement MVC rights in the legacy scheme if the MVC rights in the new scheme were for <b>earlier payment of pension</b> (EPA/ERRBO) in pension input period when replacement happens</li></ul>



# Member voluntary contributions

## Regulation 4 – changes to MVCs on making new scheme benefits election

- Scheme regulations may impact MVC rights when a member makes a new scheme benefits election
- When a new scheme benefits election changes (varies) MVC rights to provide a higher PIA, scheme administrators should ignore the election when calculating the PIA in respect of the varied MVC rights
- Similar effect to reg 12 SI 2023/113 which applies to basic pensionable service only

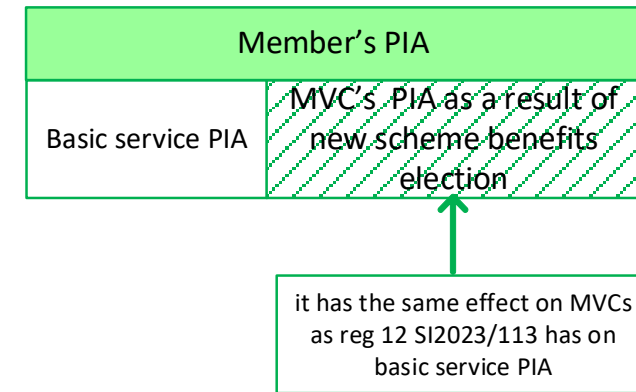
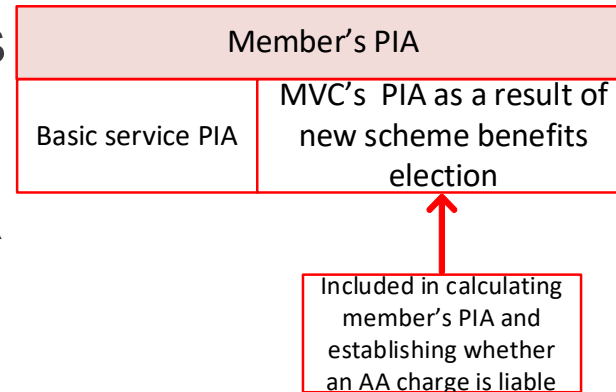




# Member voluntary contributions

## Regulation 4 – deferred member carve-out

- When a new scheme benefits election changes (varies) MVC rights to provide a higher PIA, scheme administrators should ignore the election when determining whether a deferred member meets the conditions to have a PIA of nil



# Member voluntary contributions

## Regulation 4

Regulation	Scheme	What the Regulation achieves
4	1	<p>In the pension input period when a member with MVC rights in a Chapter 1 legacy scheme makes a new scheme benefits election leading to a higher PIA:</p> <ul style="list-style-type: none"><li>• <b>Ignore</b> the election when calculating the PIA if it changes (varies) MVC rights from providing legacy benefits to new scheme benefits</li><li>• <b>Ignore</b> the election when determining whether the deferred member carve-out (when deferred members are considered to have a pension input amount of nil) applies</li></ul>



# Pension-sharing on divorce

## Regulation 5

- Scheme regulations can be made under s19 (Chapter 1) or s57 PSPJOA (Chapter 2) to adjust pension credit and pension debit connected to remediable service
- Chapter 1 and 2 schemes: pension credit members will get credit based on the higher of legacy or new/2015 scheme benefits CETV

## Chapter 1 debit member

- On rollback benefits provided under legacy scheme will need to reflect the pension debit
- When a new scheme benefits election made pension debit will be varied to be based on new scheme benefits CETV

## Chapter 2 debit member

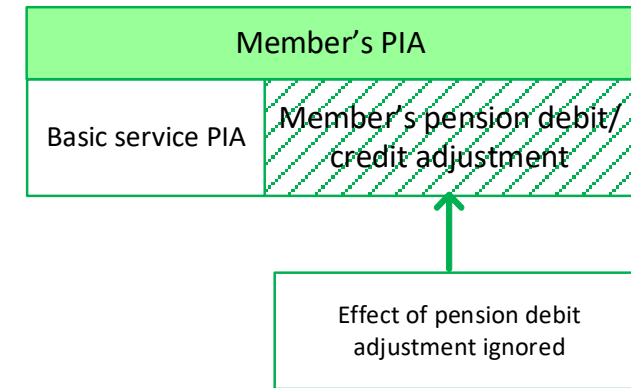
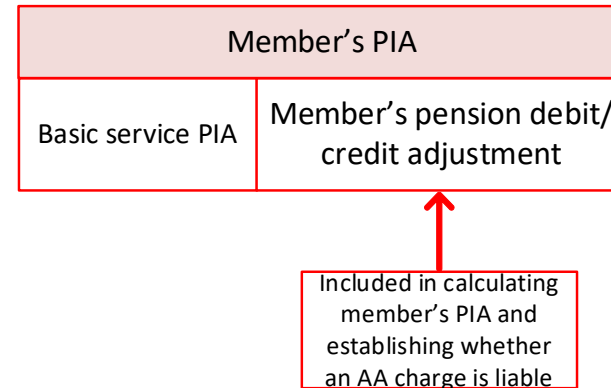
- Whether legacy or 2015 election made, benefits provided will need to reflect the pension debit



# Pension-sharing on divorce – pension credit and pension debit members

## Regulation 5

- When calculating the PIA for the pension input period scheme administrators should ignore any adjustments made to pension credits or pension debits as a result of scheme regulations under
  - section 19 for Chapter 1 schemes
  - section 57 for 2015 judicial schemes



# Partnership pension account (PPA) rights

## Regulation 6

- This regulation applies to civil service only
- Chapter 1 new scheme members were able to opt out of the scheme and instead save in a partnership pension account
- If PPA member decides to opt back into their Chapter 1 legacy scheme, schemes regulations will require PPA rights to be transferred to the legacy scheme. Member will get all opted-out remediable service pensioned under the legacy scheme.
- Crystallised PPA rights will not be transferred, amount of opted-out remediable service rights given under the legacy scheme will be reduced to reflect fact that not all PPA rights have been transferred.



# Partnership pension account (PPA) rights

## Regulation 6

- Pension input amount (PIA) for PPA unchanged
- Chapter 1 legacy scheme PIAs for remedy period PIPs increased to reflect opted out remediable service:
  - Where all PPA rights transferred reduce legacy scheme PIA for year by amount of the PPA PIA for the relevant year, and
  - Where only part of PPA rights transferred, find percentage of uncrystallised PPA rights and reduce legacy scheme PIA for year by that percentage of the PPA PIA for the relevant year
- In year PPA rights transferred, for Chapter 1 legacy scheme ignore the impact of the transfer when calculating the PIA



# PART 3 – Benefits

- Sets out the correct tax treatment for certain payments made by public service schemes following the remedy
  - small pots lump sums, including additional amounts paid after member has died
  - trivial commutation lump sum death benefits
  - arrears of dependant's scheme pension paid after the dependant has died
  - reduction of scheme pension due to pension credit adjustments
  - reduction of scheme pension due to changes to or extinguishing of MVCs
  - reduction of local government scheme pension
  - repayment of overpaid defined benefits lump sum death benefit
  - lifetime allowance excess lump sum to
    - ensure lump sum already paid or overpaid amount is repaid remains authorised
    - ensure an authorised payment can be paid where LTA no longer exceeded
  - unauthorised payment that the member repays

Regulation	Schemes	What the regulation achieves
7	1 & 2	Ensures that a small pot LS paid under reg 11/12 SI 2009/1171 remains as a small pot LS following the member's immediate choice which retrospectively provides the member with more pension rights.
8	1, 2 & 3	A top-up small pot lump sum paid following the member's death. Will be authorised if it would have been a small pot LS if paid when the member was alive. Taxed in same way as a trivial commutation lump sum.
9	1 & 2	Ensures that a trivial commutation LSDB remains as a trivial commutation LSDB following the immediate choice made in respect of the member which retrospectively provides the member (and beneficiary) with more pension rights.
10	1, 2 & 3	Where a dependants scheme pension (DSP) already in payment, authorises arrears of DSP arising as a result of the remedy where at time the arrears are paid either the dependant has died, or if the DSP had been paid to a child dependant the individual no longer qualifies as a dependant.



# Benefits

## Regulations 11 to 13 authorisation of reduced scheme pension

Regulation	Schemes	What the regulation achieves
11	1 & 2	The reduction of a scheme pension being paid to a pension credit member as a result of regulations made under s19/57 PSPJOA is a permitted reduction. Future pension payments can continue to be authorised.
12	1	The reduction or cessation of a scheme pension in payment under a Chapter 1 new scheme is a permitted reduction where this is due to MVC rights being extinguished in accordance with regulations made under section 20 PSPJOA.
13	3	Amendments to the operation of the final salary underpin means that in rare circumstances a scheme pension already being paid to a protected member is reduced. This will be a permitted reduction; future pension payments can continue to be authorised.



# Benefits

## Regulations 15 to 17 LTA excess lump sum

Regulation	Schemes	What the regulation achieves
15	All RPS	Where due to immediate choice amount of LTA used up reduces such that part or all of what was an LTAELS is no longer an LTAELS. Amount up to LTA treated as a UFPLS, and excess over LTA an LTAELS. Amount of LTA charge that can be reclaimed will be adjusted to take account of tax due on UFPLS.
17	1	Where a top-up lump sum payment is due as a result of the member's immediate choice, and that lump sum would be an LTAELS. If member is 75 or older when the lump sum is paid it will be an authorised payment.
16	1	Due to member's immediate choice the amount of benefits has reduced, and scheme administrator asks for repayment. Where part or all of what was an LTAELS is repaid, the part of the BCE relating to the repayment will be 'undone'. This regulation is similar in effect to regulation 29 of SI 2023/113



# Benefits

## Regulations 14 and 18 other repaid lump sums

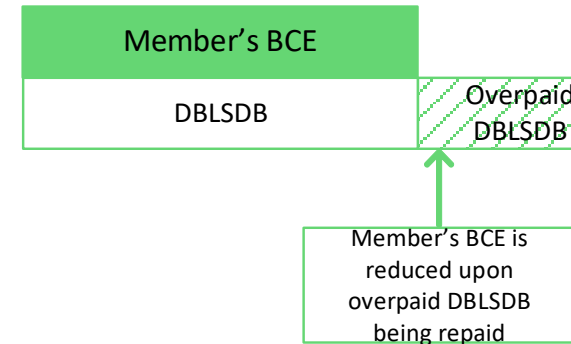
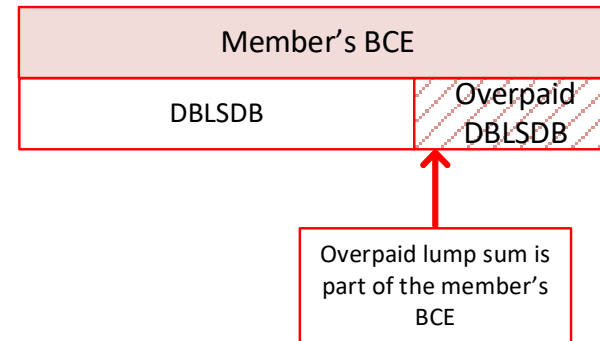
Regulation	Schemes	What the regulation achieves
14	1	<p>Where DBLSDB paid that due to immediate choice made in respect of the member the LS entitlement is now retrospectively lower than the amount paid, and the scheme administrator asks for repayment.</p> <p>Where the overpaid amount is repaid in full, the part of the BCE relating to the repayment will be 'undone'.</p> <p>Similar in effect to reg 29 SI 2023/113</p>
18	1	<p>In certain circumstances a Chapter 1 scheme may have paid a LS part or all which was an unauthorised payment. Due to the member's immediate choice their benefit entitlement has reduced and scheme administrator ask for repayment of overpaid amounts.</p> <p>Where the overpaid amount is repaid in full, the repaid amount is treated as always having been authorised. As a result any unauthorised payments and scheme sanction charges relating to that repaid amount become repayable within time limits.</p>



# Benefits

## Regulation 14

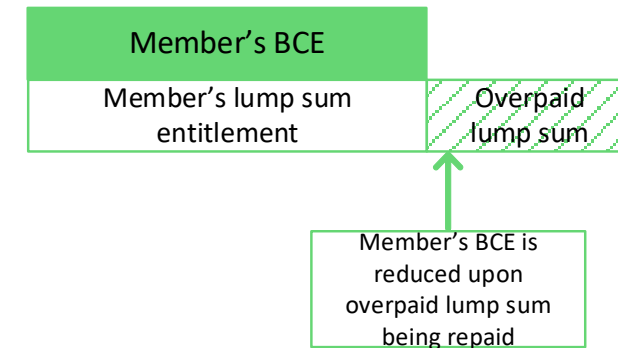
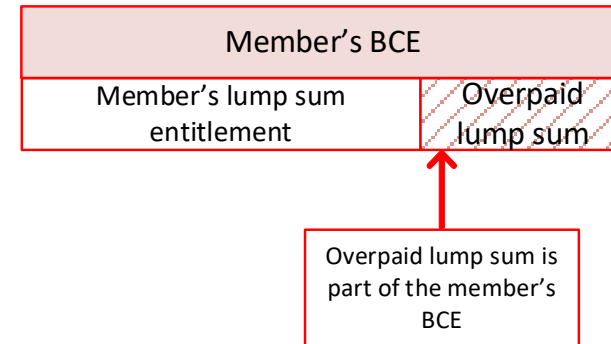
- Chapter 1 scheme members who make an immediate choice (s6 PSPJOA)
- Where the scheme reclaims the overpaid DBLSDB, this regulation enables all or part of the BCE to be undone by the repayment.



# Benefits

## Regulation 16

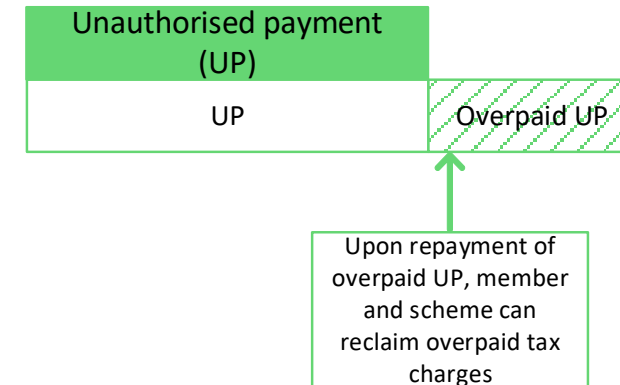
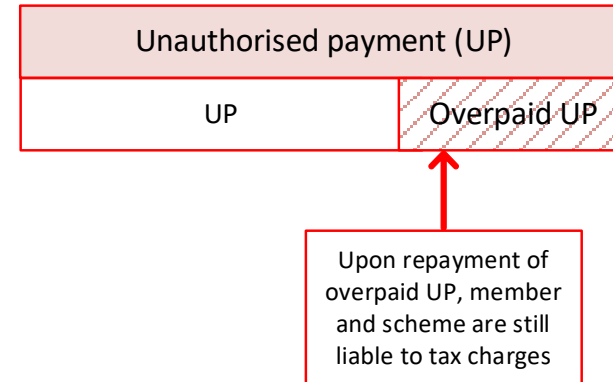
- Chapter 1 scheme members who make an immediate choice (s6 PSPJOA)
- Where the scheme reclaims the overpaid lifetime allowance excess lump sum, this regulation enables all or part of the BCE to be undone by the repayment.



# Benefits

## Regulation 18

- Applies to certain Chapter 1 schemes, who may have made unauthorised payments. Due to the immediate choice (s6 PSPJOA) the amount of the unauthorised payment is reduced.
- Where the overpaid unauthorised payment is repaid in full it is treated as never having been an unauthorised payment. In effect the unauthorised payments charge and surcharge will no longer apply and the member will be able to claim a refund for the overpaid tax charges



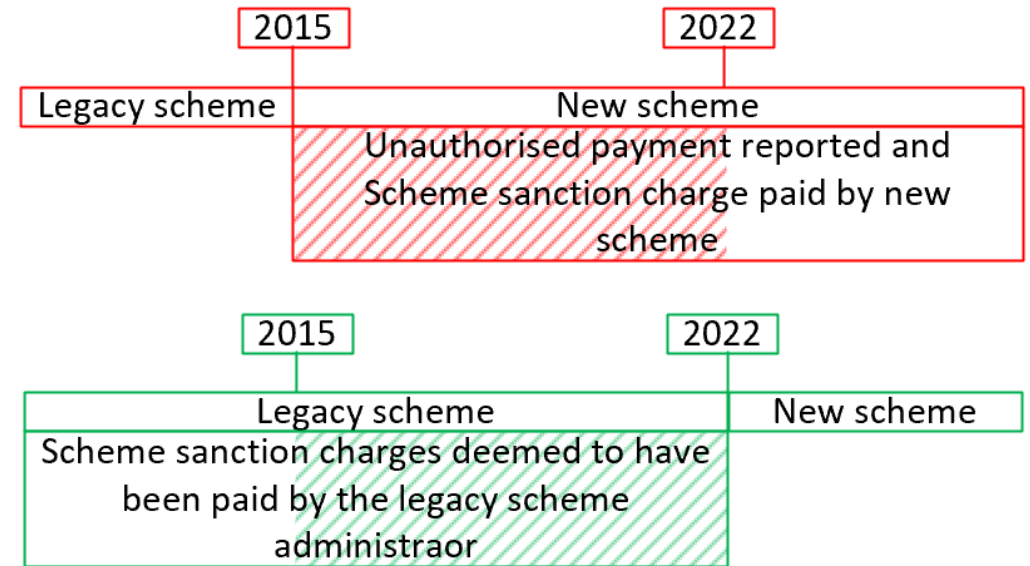
# PART 4 – Scheme sanction charge

## Regulation 19

If

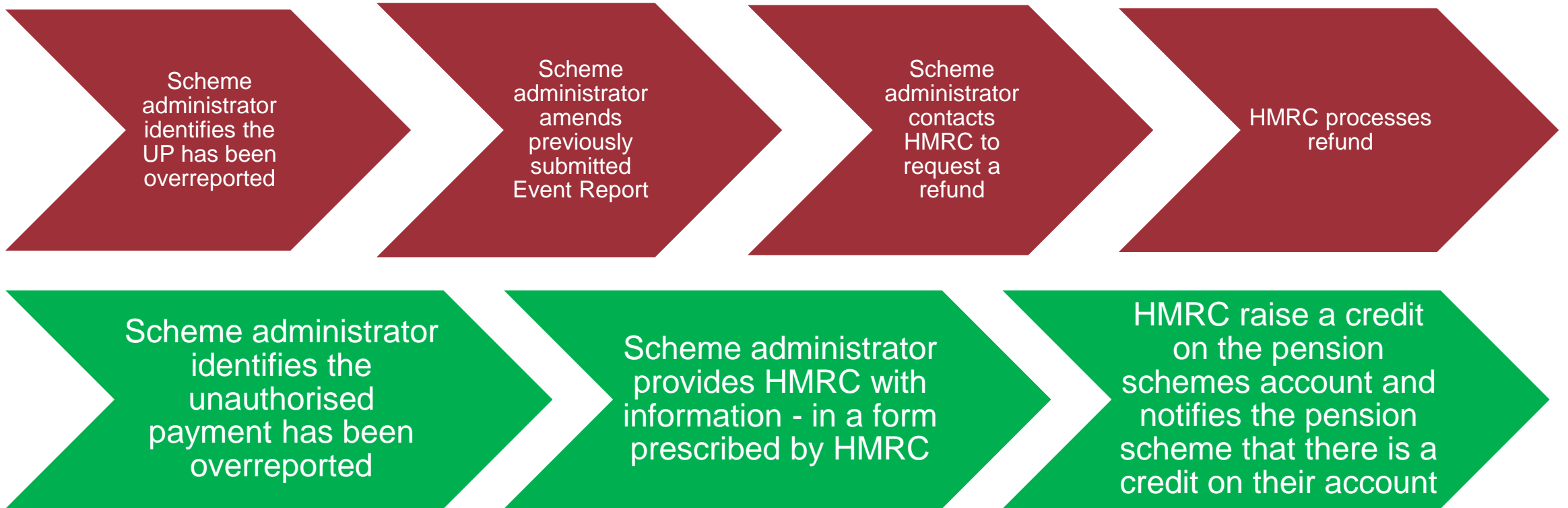
- an unauthorised payment was made during the remedy period
- a change following the implementation of the remedy means that the unauthorised payment has reduced and
- the scheme sanction charge has been overpaid

scheme administrators have to make an application to reclaim the overpayment of scheme sanction charge



# Scheme sanction charge

## Regulation 19





# PART 5 – Consequential amendments

## Regulations 21 to 25

- Regulations 21 to 25 make minor amendments to S.I. 2023/113 to provide further clarity and remove any uncertainty that may arise.
- Regulation 21 amends regulation 7 of S.I. 2023/113 so that it covers all of the modifications to regulation 14B of the Registered Pension Schemes (Provision of Information) Regulations 2006 that are needed.
- Regulations 22 and 23 amends regulations 8 and 9 of S.I. 2023/113 so that it is clear that in order for a scheme pays election to be made, the member has to be alive.
- Changes to regulation 13 of S.I. 2023/113 made by regulation 24 - ensures deferred member carve out also works for partial retirees with MVC rights.



# PART 6 – Administration

## Regulations 26 to 38

- The remedy retrospectively changes a member's pension benefit provision. As a result members may have new charges or increases or decreases to previous charges. Whether members have to pay or can reclaim tax could depend on when members make their choice and/or are told about the changes.
- To prevent members receiving different tax outcomes, regs 26 to 38 provide a special new format instead of Self Assessment for members who as a result of the remedy have changes to:
  - Annual allowance charges
  - Lifetime allowance charges
  - Unauthorised payments charges
  - Unauthorised payments surchargesin relation to the following tax years: 2019-20      2020-21      2021-22      2022-23
- Most individuals impacted by the remedy will not be affected by the new special format



# Tax administration

Term	What we want
<b>Population in Scope</b>	<ul style="list-style-type: none"><li>• Will apply to those who have an increased, new or decreased AA/LTA/UP tax charge and have remediable service as set out under Part 1 of PSPJOA</li></ul>
<b>Taxes in scope</b>	<ul style="list-style-type: none"><li>• AA charges</li><li>• LTA charges</li><li>• Unauthorised payments charges</li><li>• Unauthorised payments surcharges</li></ul>
<b>Years in scope</b>	Members will be able to make changes in relation to tax years: <ul style="list-style-type: none"><li>• <b>2019-20 ; 2020-21 ; 2021-22 ; 2022-23</b></li></ul>
<b>Treatment of 2022-23</b>	<ul style="list-style-type: none"><li>• 2022-23 is not within the remedy period years. However, it is included as an additional year in these regulations due to the implementation of the remedy during this tax year</li><li>• Members should complete their Self Assessment returns to the best of their knowledge and belief</li><li>• If as a result of the remedy pensions information on the 2022-23 return changes, the SA return should not be amended</li><li>• Changes will be made in a new special format – further details will be provided by HMRC</li></ul>



# Tax administration

## Regulation 26

- This regulation provides definitions for terms used in regulations 26 to 38

## Regulations 27 to 29 and Schedule 1 provision of specified information

- The new special format replaces the need to submit, notify or correct a self assessment return under the standard regime in relation to relevant pension tax charges – that is AA charges, LTA charges, unauthorised payments charges and unauthorised payments surcharges – for tax years 2019-20 to 2022-23.

# Tax administration

## Regulation 27

- Tells you who must report to HMRC via new special format – a ‘specified individual’ (or their representative where that person has died before the reporting deadline)
- Most individuals impacted by the remedy are not ‘specified individuals’ as they will not have a change to their AA, LTA or unauthorised payments charge liability
- Report needed only for tax years (2019-20 to 2022-23) in which there has been a change to a relevant tax liability
- Change in liability can arise under non-public service scheme as long as the change in tax liability is due to the retrospective remedy, e.g. an LTA charge under a personal pension which arises after an ‘amended’ public service BCE.
- Regulation 27 together with Schedule 1 specifies what information must be given to HMRC



# Tax administration

## Regulation 28 -1

Regulation 28 sets out the deadlines for providing that information:

For:

- Members of judicial schemes
- Members of local government schemes
- Members of other public service schemes who were alive but not yet started to take their pension at the start of the remedy

the deadline for providing information is:

- 31 January 2025
- or if later
- 3 months after
    - pension savings statement is issued or
    - unauthorised payments charge reduced due to repayment of lump sums

If any of those members die between 1 October 2024 and 31 January 2025 then the deadline for information is:

- 3 months after the individual's death



# Tax administration

## Regulation 28 -2

Regulation 28 sets out the deadlines for providing that information:

For members of other public service schemes (not judicial or local government schemes) who started to take their pension or died before the remedy was implemented the deadline for providing information is:

- 31 January 2027  
or if later
- 3 months after
  - pension savings statement or BCE statement is issued
  - the end of the period to elect for new scheme benefits
  - unauthorised payments charge reduced due to repayment of lump sums

If any of those members die between 1 October 2026 and 31 January 2027 then the deadline for information is:

- 3 months after the individual's death



# Tax administration

## Regulation 29

- Regulation 29 requires members or if they have died the person assessable in their place, to keep documents that relate to the information they have to provide under regulation 27
- Documents must be kept for at least four years after the relevant reporting deadline for the individual
- There is a penalty of up to £3,000 for not complying with this requirement



# Tax administration

## Regulations 30 to 32

- Regulation 30 give HMRC the power to raise assessment for any unpaid relevant pension tax charges (AA/LTA/UP)
- Regulation 31 provides for the time limit for when HMRC can make an assessment.
  - Where info reported HMRC normally has 4 years from provision of information to make an assessment
  - Where information inaccurate extended deadline of 6 years (careless) or 20 years (deliberate) from provision of information
  - Follows model for usual time limits
  - Where info not reported time limit to make an assessment is 31 January 2045 for chapter 2 and 3 members and chapter 1 member alive and not a pensioner when section 2 PSPJOA in force, otherwise 31 January 2047
  - Shorter time limit where individual died before reporting deadline
- Regulation 32 allows HMRC to withdraw an assessment



# Tax administration

## Regulations 33 to 34

Regulations 33 and 34 set out the circumstances, and how, members can claim a repayment of AA, LTA or unauthorised payments charges or unauthorised payments surcharges that is overpaid as a result of the remedy

### Who can claim

- Members can claim a repayment of these charges only if they paid the tax; they cannot claim under regulation 33 if scheme administrator has paid the tax

### Regulation 33

- Members must make an application to claim an overpayment of a relevant pension tax charge
- If a member has previously made payments themselves through the self-assessment (SA) system then they must use the new special format and should not amend their SA return



# Tax administration

## Regulations 33 to 34

### Regulation 34

- Deadline for repayment application:
  - 31 January 2029 for
    - Chapter 2 members
    - Chapter 3 members and
    - Chapter 1 member alive and not a pensioner when section 2 PSPJOA in force,
  - otherwise 31 January 2031
- Sets out information that must be included in the repayment application. Further details on the form of the application will be provided in due course



# Tax administration

## Regulation 35

- HMRC can recover repayments of tax that have been overpaid
- Where a member receives a repayment that is more than should have been repaid, HMRC can make an assessment for the overpaid amount in the same way as for unpaid tax
- The deadline for HMRC making this assessment is four years after the end of the year in which the repayment was made

# Tax administration

## Regulation 36 - Penalties

- Regulation 36 makes clear that information provided to comply with regulation 27 is subject to the general penalty regime in Schedule 24 to FA 2007 rather than the penalties for providing false statements under section 264 FA 2004

## Regulations 37 and 38

- Regulations 37 and 38 make changes to and/or apply existing tax legislation so that the new special format applies rather than existing legislation

# Consultation from 22 May to 19 June 2023

- Respond to the technical consultation on The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023 were published at [policy pensions@hmrc.gov.uk](mailto:policy pensions@hmrc.gov.uk)
- The consultation ends at **23.59 on 19 June 2023**