

HM Revenue and Customs

Sent by email to: polycypensions@hmrc.gov.uk

19 June 2023

Consultation: The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No2) Regulations 2023

Thank you for your technical consultation seeking views on the draft Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No2) Regulations 2023 ('the Regulations').

I respond on behalf of the Local Government Association (LGA). The LGA is a politically led, cross-party membership organisation which represents more than 330 councils of all types and 44 fire authorities across England. We work on behalf of our members to support, promote, and improve local government.

The response has been drafted by the Pensions Team at the LGA with particular reference to the Firefighters' Pension Scheme (FPS). The team provide employer and administrator support to various public service pension schemes, including the Local Government Pension Scheme (LGPS) and the FPS.

This response sets out the LGA's view on the draft regulations and guidance in respect of the FPS. We would like to thank HMRC for the opportunity to provide comments and for the roundtable engagement with schemes which took place prior to the response deadline.

While not directly relevant to the consultation, we would like to provide some background and context to the administration and management of the scheme, which provide unique challenges to the implementation of remedy.

Under the scheme regulations, each of the 44 Fire and Rescue Authorities (FRAs) are responsible for the management and administration of their scheme and are defined in law as the scheme manager. This puts the responsibility to comply with overriding pension legislation on each of the political bodies charged with governance of the Fire and Rescue Service (FRS), i.e. Combined Fire Authorities, PFCCs, County Councils, Mayoral functions etc.

Each FRA is required to administer the pension scheme either in-house or through appointing a third-party administrator. There are currently 12 different pension administrators in England, ranging from single client sites to the largest administrator with 23 FRA clients. They are mostly not for profit organisations, with one known exception, and are often linked to LGPS administering authorities.

While the scheme manager remains the legally responsible scheme administrator for the purposes of section 270 of the Finance Act 2004, in practice the FRA or delegated scheme manager relies heavily on the expertise of the appointed pension administrator to comply with the tax regulations and will rely on the appointed pension administrator to undertake the 'rollback' provisions under the Public Service Pensions and Judicial Offices Act (PSPJOA) 2022.

It is the responsibility of each administrator to contract a software supplier that underpins their solution. There are two software suppliers who supply pension administration software for the FPS: Civica and Heywood Pension Technologies.

Please do not hesitate to contact me if you have any questions about this response.

Yours faithfully,



Joanne Donnelly
Head of Pensions

Comments on the Regulations and Guidance

1. In responding to this consultation, our response concentrates on the application of the Regulations to the FPS but also includes general comments.
2. The LGA welcomes the provisions for dealing with the PIA when a member's added pension is extinguished due to the age discrimination remedy as this makes it administratively easier.
3. The LGA also welcomes the provisions under Regulation 5 which make dealing with an adjustment to the PIA in respect of pension debit benefits simpler to deal with.
4. In terms of Part 3 – Benefits, we are pleased that the correct tax treatment of payments made under Regulations 7-13 has been clarified and that these are now deemed to be authorised.
5. With regards to Regulation 16, it is noted that the scheme can reclaim the overpaid lifetime allowance excess lump sum. There are currently no guidelines as to how this may be done by schemes. The LGA would welcome details of the processes which need to be followed.
6. In relation to Regulation 18, the member can claim a refund for overpaid tax charges relating to an unauthorised payment. It is currently unclear what the process will be for members to do this. We would be grateful for a step-by-step guide as to how this will be done and how this will be communicated clearly to members.
7. Under Regulation 19 scheme administrators will have to make an application to reclaim the overpayment of a scheme sanction charge. We would welcome further details on the process for this and would welcome a demonstration or training sessions showing how this would be done. If this process is being developed currently, the LGA would be keen to have some input into that development, along with key administrators and fire authorities.
8. We note that once the scheme administrator provides HMRC with information in a form prescribed by HMRC, that HMRC will raise a credit on the pension scheme's account – and notify the pension scheme that the credit is there. Again, we would like clarity as to how this will work in practice. This may ultimately lead to further steps needing to be created in administrator and FRA processes. FRAs and administrators will need to evaluate the time required for these new processes when planning the allocation of resources.

9. In relation to Regulation 14, the LGA seeks clarity as to whether, if the overpaid amount is not repaid in full, for example because the amount is being repaid in instalments instead, whether the payment remains unauthorised.
10. The LGA welcomes the provisions in Regulations 27-29 which mean that a member affected by remedy for the years 2019-2020 to 2022-23 does not need to submit, notify or correct a self assessment return under the standard regime in relation to relevant pension tax charges.
11. The LGA would however like clarity in respect of the earlier out-of-scope years and how the process will work for those members who need compensating for overpaid tax for those years.
12. The LGA would also like clarification in relation to immediate detriment cases whereby fire authorities have paid a member's benefits and an increased tax charge has been incurred. We would like clarity confirming whether a member can also benefit from the in-scope years quoted, and additionally what the process is for the tax charges for the out-of-scope tax years.
13. The LGA would also like clarity explaining what happens when a fire authority has recalculated an annual allowance charge for an out-of-scope year, paid the extra tax over to HMRC and received a late payment interest charge on the tax owed. As this consultation states that the aim is to put the member back into the position that they would have been in had the discrimination not occurred, then the LGA would like confirmation that the fire authorities can reclaim this late payment interest charge back from HMRC and we would welcome confirmation of the process for this.
14. We note that Regulation 29 requires members or a deceased member's representative to keep documents in relation to Regulation 27 for four years after the relevant reporting deadline for the individual. The LGA would like details which show the communication methods which HMRC will use to ensure that the relevant individuals will be aware of this requirement so as to avoid a potential £3,000 fine.
15. We note that in the consultation guidance under 8.3.2 that where a member has to pay more 'relevant pension tax charges' that members are only given 30 days from the date of the assessment to pay the tax and that interest will be payable after the 30 days. The LGA feels that this time frame is not long enough for members to pay this tax to HMRC and that a longer timeframe needs to be applied in these cases, due to the specific circumstances involved in

this age discrimination remedy.

16. The LGA would welcome confirmation of how HMRC are going to guard against duplicate payments in respect of an individual's account. For example, if the scheme paid the charge on behalf of the member but the member seeks to claim the money directly from HMRC. We note that under Regulation 35 HMRC has 4 years from the end of the tax year in which the overpayment happened to assess the amount that should not have been repaid to the member. However, we would like reassurances that processes will be put in place to prevent a duplication of payments in the first place.
17. In [our response](#) to the consultation on The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 we pointed out Regulation 10 does not allow for a member to reverse a decision they may have made to settle an Annual Allowance Tax Charge (AATC) by lump sum, for example where the charge was under £2,000 but now exceeds that amount. In our view, this does not fully reinstate the individual to their pre-reform position as they may have made a different decision at that time and we would welcome HMRC amending the provisions for this.
18. Finally, our view is that it would have made the Regulations easier to use had they been a set of amending regulations rather than a second set to avoid the need to refer to two sets of documents.