

HMRC remedy tax consultation



Draft legislation

[The Public Services Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023](#)

A technical consultation on this draft statutory instrument, which ensures the pensions tax framework will apply as intended to pension scheme administrators and members affected by the public service pensions remedy

Consultation closes on 6 January 2023

Supporting documents: <https://www.gov.uk/government/publications/the-public-services-pension-schemes-rectification-of-unlawful-discrimination-tax-regulations-2023>

The consultation

The consultation seeks views from pension scheme administrators on the draft regulations. The regulations set out changes to how the pensions tax rules will apply to pension scheme administrators and members of public service pension schemes as a result of the public service pensions remedy

The regulations will make changes to how pensions tax legislation operates in certain circumstances, including changes to how schemes will need to report and pay extra tax charges or reclaim overpaid tax and ensure that schemes can pay pension benefits as authorised payments.

This legislation is intended to take effect from 6 April 2023, but some provisions will have a retrospective effect – retrospection is set out in each regulation

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

The Statutory Instrument will make modifications to the Finance Act 2004 to ensure that individuals are put back into their pre-reform position (as far as possible)

What's covered

- Contributions
- Benefits
- AA/ LTA
- LTA protections (IP 2016 and FP 2016)
- Compensation

What's not covered*

- Added years/ pension
- Ill-health/ death
- Divorce
- Transfers

*Consultation on these 'discrete' elements will take place early 2023

Contributions – regulation 3

“3. In determining for the purposes of section 188 of FA 2004 (relief for contributions)(g) whether an individual is at any time an “active member” of a Chapter 1 new scheme, section 2(1) of PSPJOA (roll-back of remedial service to Chapter 1 legacy scheme) is to be ignored”

Roll-back of remediable service from reformed to legacy scheme removes connection between service and contributions i.e. tax relievable status

Regulation 3 ensures entitlement to tax relief on contributions to FPS 2015 is not affected by ignoring roll-back of pensionable service to FPS 1992/ 2006

Annual allowance – regulation 4

Adjusted income and threshold income calculated on basis of legacy scheme contributions

- Members with tapered AA or close to threshold/ adjusted income
- Contributions to reformed scheme are ignored
- Member treated as paying legacy scheme contributions
- Contributions for AP will remain unchanged
- Any DCU election to receive new scheme benefits is ignored

Annual allowance – regulation 5

Provision of information by scheme administrators to the Commissioners

- Event reporting
 - Schemes not to amend previously submitted Event Reports
 - Updated or new PSS must be reported on Event Report in tax year of issue

Annual allowance – regulation 6 (DCU)

Annual provision of information by scheme administrator to member (active and deferred)

- If previously provided, regulation 6 requires schemes to provide new PSS by 06/10/2024 (latest) for remedy period and/ or 2022/23 tax year – extension of 12 months
- Scheme pays deadlines also moved back
- For remediable service only, normal timescales apply to non-remedy cases

Annual allowance – regulation 6 (IC)

Annual provision of information by scheme administrator to member (pensioner and deceased)

- For pensioner and deceased members, deadline further extended to later of:
 - 06/10/2024
 - 6 months from date of IC election/ end of election period (Oct 2026)

Annual allowance – regulation 7

Provision of information by scheme administrator to member on request

- If previously requested, regulation 7 requires schemes to provide new PSS for remedy period and/ or 2022/23 tax year:
 - Within 3 months of request
 - By 06/10/2024 or 6 months from date of IC election/ end of election period (Oct 2026) – the rectification deadline
- If benefits change following request:
 - Within 6 months of request
 - By the rectification deadline

Annual allowance – regulation 8



Deadline for active and deferred members to make MSP election for remedy period years is 06/07/2025



Deadline for pensioner and deceased members to make MSP election for remedy period years is 06/07/2027



Normal limits do not apply i.e. £40,000 threshold and £2,000 AATC



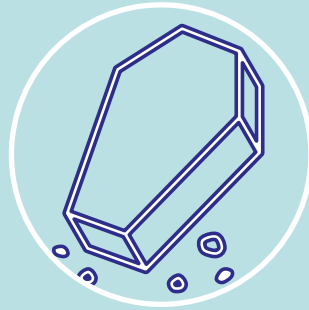
Scheme manager remains jointly and severally liable

Operation of scheme pays for remedy years

Annual allowance – regulation 9



Deadline for active and deferred members to make MSP election is extended to 06/07/2025



Deadline for pensioner and deceased members to make MSP election is extended to 06/07/2027



Normal limits do not apply i.e. £40,000 threshold and £2,000 AATC



Scheme pays is restricted to tax amount due as a result of remedy

Operation of scheme pays for 2022-23

Annual allowance – regulation 10

Chapter 1 schemes: mandatory scheme pays treated as operated by legacy schemes

- Treats scheme pays election as being made from the legacy scheme administrator instead of the current scheme administrator.
- Any AA tax is also paid by the legacy scheme administrator.
- If a member has previously paid the tax themselves as it was under £2,000 and now wants to change this so that the scheme administrator pays, it cannot do so as far as HMRC are concerned as the payment was right at the time.
- The same applies to late payment penalties.

Annual allowance – regulation 11

11. Chapter 1 schemes: administrative provisions relating to scheme pays

- Tax is due in the quarter after the scheme pays election was made.
- The details need to be made available to the administrator who is paying the tax.
- Underpayment = schemes to submit additional AA on next AFT quarter, not amend previously submitted return
- Overpayment = schemes provide prescribed form to HMRC. HMRC raise credit on pension schemes account

Annual allowance – regulations 12 and 13

12. Chapter 1 legacy schemes: effect of new scheme benefits election in first PIP

- Where a new scheme election is made and the AA amount increases, the regulation means that new scheme benefits election is disregarded i.e. no increase

13. Chapter 1 legacy schemes: effect of new scheme benefits election in later PIPs

- Where members have taken legacy scheme benefits and the reformed scheme benefits are deferred. The pension input amount will be nil for that arrangement (deferred member carve out)

Benefits – regulations 15 and 16

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

- PPA in FPS 1992 (50 plus 25 years' service) not affected by election for new scheme benefits under IC or DCU
- Regulation ensures that entitlement to new scheme benefits treated as arising on same date as legacy scheme benefits
- N.B. Regulation 16 does not apply as FPS was carved out of increased NMPA (57 from 06/04/2028)

Benefits – regulations 17 to 21

Authorisation
of
unauthorised
payments –
live
members

- Regulation 17 – additional lump sum (timing of payment)
- Regulation 18 – trivial commutation lump sum already paid
- Regulation 19 – trivial commutation additional lump sum
- Regulation 20 – serious ill-health lump sum already paid
- Regulation 21 – serious ill-health additional lump sum

Benefits – regulations 22 to 25

Authorisation of payments – deceased members. (Where payments made to anyone other than member would usually be unauthorised).

- Regulation 22 – additional scheme pension
- Regulation 23 – additional lump sum
- Regulation 24 – trivial commutation additional lump sum
- Regulation 25 – serious ill-health additional lump sum

Benefits – regulations 26 to 30

Authorisation
of
unauthorised
payments -
general

- Regulation 26 – reduction of scheme pension due to recovery of underpaid LTA charge
- Regulation 27 – overpayment of pension in payment
- Regulation 28 – overpayment of lump sum (PCLS)
- Regulation 29 – recovery of overpaid PCLS allows LTA % to be adjusted
- Regulation 30 – top up death grant treated in line with original terms

LTA – regulations 31 to 33

31. Charges paid by Chapter 1 new schemes treated as paid by Chapter 1 legacy schemes

- AFT returns and payments made by reformed scheme treated as being made by legacy scheme

32. Reporting and payment by public service scheme of charges affected by rectification

- Underpayment = schemes to submit additional LTA on next AFT quarter, not amend previously submitted return

33. Application required by schemes to reclaim overpayment resulting from rectification

- Overpayment = schemes provide prescribed form to HMRC. HMRC raise credit on pension schemes account

LTA – regulations 34 to 35

34. Public service schemes not permitted to apply for discharge of increased charge

- Scheme cannot apply for discharge of increased LTA charge. Scheme remains jointly and severally liable with member

35. Public service scheme to be liable where private sector scheme discharged

- If LTA charge arises in private sector scheme which can be attributed to remedy and that scheme applies for discharge, member can elect for PSPS to be jointly and severally liable

IP 2016 and FP 2016 – regulations 36 to 39 (not 37)

36. Election for new scheme benefits under Chapter 1 scheme taken into account

- Election under IC/ DCU treated as being made on 05/04/2016 for purposes of retaining IP 2016 – allows valuation of benefits to be increased

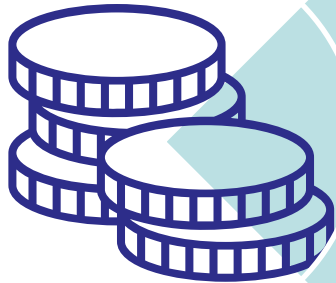
38. Deadline for provision of information by schemes disapplied

- Deadline for IP 2016 elections is removed – in relation to remediable service only

39. Increase in rights as a result of new scheme benefits election ignored

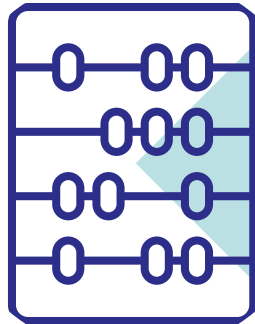
- Increased benefits as a result of IC/ DCU election are ignored for the purposes of FP 2016

Compensation – regulation 43



Compensation payments are exempt from:

- Income tax
- Capital gains tax
- Inheritance tax



Relevant tax relief will be taken into account for the calculation of those payments e.g. return of contributions

Implications for ID

This legislation is intended to take effect from 6 April 2023, but some provisions will have a retrospective effect – retrospection is set out in each regulation

Tax regulations are consequential on PSPJOA 2022

PSPJOA disapplies sections of Act where an ID remedy has been provided ([Section 31](#)) to prevent double recovery

Scheme regulations will be drafted to bring in relevant sections to ensure member is not detrimented by immediate detriment

Regulations provide clarity on treatment of tax, but require all legislation in place to be effective

Any questions



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Thank you for listening!

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