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STATUTORY INSTRUMENTS

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**2023 No. 912**

**The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023**

**PART 2**

**Annual allowance**

**Chapter 1 schemes: effect of extinguishment and creation of voluntary contributions rights**

**3.—(1)** This regulation applies where, as a result of scheme regulations made by virtue of section 20 of PSPJOA 2022 (voluntary contributions) in respect of an arrangement<sup>(1)</sup> under a Chapter 1 new scheme<sup>(2)</sup>, rights (“old rights”) in respect of an arrangement under that scheme to additional benefits<sup>(3)</sup>, or to the earlier payment of benefits, that would otherwise have been secured by the payment of voluntary contributions<sup>(4)</sup> in respect of an individual, are extinguished.

(2) For the purposes of determining the pension input amount<sup>(5)</sup> of the individual in respect of the arrangement under the Chapter 1 new scheme for the pension input period<sup>(6)</sup> in which the old rights are extinguished, the individual is to be treated as if those rights had not been extinguished.

(3) Paragraphs (4) and (5) apply where, in connection with the extinguishment of the old rights, and as a result of scheme regulations made by virtue of section 20 of PSPJOA 2022, rights (“new rights”) are created in respect of an arrangement under the relevant Chapter 1 legacy scheme<sup>(7)</sup> which represent either—

- (a) rights of an equivalent value to the extinguished old rights, or
- (b) rights that would have been secured under that scheme if the voluntary contributions had been paid to that scheme in respect of that individual.

(4) For the purposes of determining the pension input amount of the individual for the replacement pension input period in respect of the arrangement under the relevant Chapter 1 legacy scheme, the new rights are to be ignored to the extent that they relate to voluntary contributions that were paid with the purpose of securing additional benefits.

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- (1) By virtue of regulation 2(2)(b), “arrangement” has the meaning given in section 152 of FA 2004. Section 152 was amended by section 24(2) of F(No. 2)A 2023 (c. 30).
- (2) By virtue of regulation 2(2)(a), “Chapter 1 new scheme” has the same meaning as in Chapter 1 of Part 1 of PSPJOA 2022 (see section 33(2) of that Act).
- (3) By virtue of regulation 2(2)(b), “benefits” provided by a pension scheme is to be construed in accordance with section 279(2) of FA 2004.
- (4) By virtue of regulation 2(2)(a), “voluntary contributions” has the same meaning as in Part 1 of PSPJOA 2022 (see section 110(1) of that Act).
- (5) By virtue of regulation 2(2)(b), the “pension input amount” of an arrangement is determined in accordance with section 229(2) of FA 2004. Section 229 was amended by paragraph 6 of Schedule 17 to FA 2011 (c. 11) and by paragraphs 7 and 8 of Schedule 4 to F(No. 2)A 2015 (c. 33).
- (6) By virtue of regulation 2(2)(b), “pension input period” is determined in accordance with sections 238 to 238ZB of FA 2004. Sections 238ZA and 238ZB were inserted by paragraph 3 of Schedule 4 to F(No. 2)A 2015 and amended by paragraph 16 of Schedule 17 to FA 2011 and paragraph 2 of Schedule 4 to F(No. 2)A 2015.
- (7) By virtue of regulation 2(2)(a), “the relevant Chapter 1 legacy scheme” has the same meaning as in Chapter 1 of Part 1 of PSPJOA 2022 (see section 4 of that Act).

(5) For the purposes of determining, in respect of an individual who is a deferred member<sup>(8)</sup> of the relevant Chapter 1 legacy scheme, whether the value of their relevant rights<sup>(9)</sup> under the arrangement under that scheme has increased during a pension input period—

- (a) for the replacement pension input period or any subsequent pension input period, any new rights are to be ignored to the extent that they relate to voluntary contributions paid to the Chapter 1 new scheme during the period of remediable service<sup>(10)</sup> for the purpose of securing additional benefits, and
- (b) for any pension input period after the replacement pension input period, any new rights are to be ignored to the extent that they relate to voluntary contributions paid to the Chapter 1 new scheme during the period of remediable service for the purpose of securing the earlier payment of benefits.

(6) In this regulation, “replacement pension input period” means the pension input period in which any new rights are conferred.

**Chapter 1 legacy schemes: effect of variation of voluntary contributions rights where new scheme benefits election is made.**

4.—(1) Paragraph (2) applies where—

- (a) a new scheme benefits election is made in relation to the remediable service of an individual,
- (b) as a result of scheme regulations made by virtue of section 20 of PSPJOA 2022, the individual’s rights under the relevant Chapter 1 legacy scheme that would otherwise have been secured by the payment of voluntary contributions are varied, and
- (c) that variation would (disregarding paragraph (2)) lead to an increase in the pension input amount in respect of an arrangement under that scheme for the retirement pension input period.

(2) For the purposes of determining the pension input amount of the individual in respect of the arrangement for the retirement pension input period, the individual is to be treated, on and after the coming into effect of the election, as entitled to the rights that the individual would have been entitled to if the election had not been made.

(3) In this regulation, “the retirement pension input period” means the pension input period ending in the tax year in which the new scheme benefits election comes into effect.

**Chapter 1 schemes: additional pension commencement lump sum unavailable after voluntary contributions rights extinguished or varied**

5.—(1) Paragraph (3) applies where—

- (a) before the relevant time, an individual was paid a pension commencement lump sum<sup>(11)</sup> under a Chapter 1 scheme,

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<sup>(8)</sup> By virtue of regulation 2(2)(b), “member” in relation to a pension scheme is defined in section 151 of FA 2004; and “deferred member” is defined in section 151(4). Section 151 was amended by paragraph 2 of Schedule 23 to FA 2006 (c. 25).

<sup>(9)</sup> By virtue of regulation 2(2)(b), the “relevant rights” of an individual are defined in section 234(5C) of FA 2004. Section 234 of FA 2004 sets out how to calculate the pension input amount in respect of a defined benefits arrangement for any pension input period; in particular, how to determine whether there has been an increase in the value of the individual’s rights under the arrangement.

<sup>(10)</sup> Section 11(7) of FA 2022 provides that “remediable service” means remediable service within the meaning of Chapter 1, 2 or 3 of Part 1 of PSPJOA 2022 (in this case, Chapter 1).

<sup>(11)</sup> By virtue of regulation 2(2)(b), “pension commencement lump sum” is defined in paragraph 1 of Schedule 29 to FA 2004. Paragraph 1 was amended by paragraph 34 of Schedule 10 to FA 2005 (c. 7), paragraph 11(2) of Schedule 20 to FA 2007 (c. 11), paragraph 24(2) and paragraph 79(2) of Schedule 16 to FA 2011, section 51 of FA 2013 (c. 29), paragraph 21(2) of Schedule 5 to FA 2021 (c. 26) and section 24(7) of F(No. 2)A 2023.

- (b) that lump sum was paid in connection with rights (“original rights”) in respect of an arrangement under that scheme to additional benefits, or to the earlier payment of benefits, that were secured by the payment of voluntary contributions, and
- (c) as a result of scheme regulations made by virtue of section 20 of PSPJOA 2022—
  - (i) later rights are created in an arrangement under the relevant Chapter 1 legacy scheme, or
  - (ii) original rights or later rights are varied (“varied rights”).

(2) In paragraph (1)—

“later rights” means rights that represent either—

- (a) rights of an equivalent value to the original rights that were extinguished by scheme regulations made by virtue of section 20 of PSPJOA 2022, or
- (b) rights that would have been secured under the relevant Chapter 1 legacy scheme if the voluntary contributions connected to the original rights had, instead, been paid to that scheme in respect of that individual.

“the relevant time” means the time at which section 2(1) of PSPJOA 2022 (remediable service treated as pensionable under Chapter 1 legacy schemes) comes into force.

(3) After the relevant time, the relevant Chapter 1 legacy scheme is to be treated as making an unauthorised payment(12) to the individual, or to the individual’s personal representatives, if it pays a pension commencement lump sum in connection with later rights or varied rights.

### **Chapter 1 schemes and judicial 2015 schemes: pension debits and pension credits**

6.—(1) Paragraph (2) applies where—

- (a) a member of a Chapter 1 scheme or a judicial scheme(13) has at any time become entitled to a pension credit or subject to a pension debit(14), and
- (b) the amount of that pension debit or pension credit is (disregarding paragraph (2)) adjusted by provision made under section 19(1) or 57(1) of PSPJOA 2022 (pension credit members).

(2) For the purposes of determining the pension input amount in respect of an arrangement under the Chapter 1 scheme or the judicial 2015 scheme(15) for the pension input period in which the debit or credit is adjusted, any provision made under section 19(1) or section 57(1) of PSPJOA 2022, as the case may be, is to be ignored.

### **Chapter 1 legacy schemes: inward transfer, extinguishment and creation of PPA rights**

7.—(1) Paragraphs (2) and (3) apply where—

- (a) there is a transfer of sums or assets held for the purposes of, or representing accrued rights under, an arrangement under a partnership pension account (“the transfer”),
- (b) as a result of the transfer, the sums or assets become held for the purposes of, or represent rights under, an arrangement under the relevant Chapter 1 legacy scheme,

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(12) By virtue of regulation 2(2)(b), “unauthorised payment” is defined in section 160(5) of FA 2004.

(13) By virtue of regulation 2(2)(a), “judicial scheme” has the same meaning as in Chapter 2 of Part 1 of PSPJOA 2022 (see section 70(1) of that Act).

(14) By virtue of regulation 2(2)(b), “pension credit” and “pension debit” are defined in section 279(1) of FA 2004. Section 279 was relevantly amended by paragraphs 456 and 480 of Schedule 3 to the Income Tax Act 2007 (c. 3).

(15) By virtue of regulation 2(2)(a), “judicial 2015 scheme” has the same meaning as in Chapter 2 of Part 1 of PSPJOA 2022 (see section 70(2) of that Act).

- (c) the transfer is made in accordance with conditions specified in provision made under section 5 of PSPJOA 2022 (election for retrospective provision to apply to opted-out service),
  - (d) rights are conferred in the arrangement under the relevant Chapter 1 legacy scheme which represent the benefits that a member would have accrued under that scheme, and
  - (e) in connection with that conferral of rights, all rights relating to the transferred sums or assets are then extinguished in that arrangement.
- (2) For the purposes of determining the pension input amount of an individual in respect of an arrangement under the relevant Chapter 1 legacy scheme—
- (a) for any pension input period in which the individual had relevant opted-out service, the pension input amount is to be reduced by the amount of any pension input amount for an arrangement under the partnership pension account which relates to a pension input period ending in the same tax year,
  - (b) where all the steps in paragraph (1)(a) to (e) occur during the transfer pension input period, section 236(5A) of FA 2004 (relevant inward transfers)(**16**) is to be ignored for that pension input period, and
  - (c) where the conferral of rights mentioned in paragraph (1)(d) occurs during the transfer pension input period, but the extinguishment of rights mentioned in paragraph (1)(e) occurs during a subsequent pension input period, the extinguishment is to be ignored for that subsequent pension input period.
- (3) For the purposes of paragraph (2)(a), if the individual has become entitled under an arrangement under the partnership pension account to the present payment of benefits prior to the transfer, the pension input amount for that arrangement is to be determined by—
- (a) calculating the pension input amount of the arrangement under section 233 of FA 2004 (pension input amount: other money purchase arrangements)(**17**),
  - (b) establishing the percentage of the individual’s rights under the arrangement that do not relate to that entitlement, and
  - (c) multiplying the amount mentioned in sub-paragraph (a) by that percentage.
- (4) In this regulation—
- “relevant opted-out service” has the same meaning as in Part 1 of Chapter 1 of PSPJOA 2022(**18**), and
- “transfer pension input period” means the pension input period in which the transfer mentioned in paragraph (1)(a) occurs.

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**(16)** Subsection (5A) of section 236 of FA 2004 was inserted by [S.I. 2015/80](#).

**(17)** Section 233 of FA 2004 was amended by section 52 of FA 2013 and by [S.I. 2015/80](#).

**(18)** By virtue of regulation 2(2)(a), section 5(7) of PSPJOA 2022 specifies when a person’s opted-out service will be “relevant” in relation to a Chapter 1 legacy scheme. Section 36 of PSPJOA 2022 determines whether any continuous period of service of a person in an employment or office will be “opted-out service” in that employment or office.