
STATUTORY INSTRUMENTS

2023 No. 912

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

PART 3

Benefits

Commutation payment: lump sum already paid

8.—(1) Paragraph (2) applies where—

- (a) an individual has been paid a lump sum that, disregarding the operation of the relevant rectification provisions⁽¹⁾, is a small pot lump sum, and
- (b) as a result of the operation of a relevant rectification provision, the condition in regulation 11(1)(e) or 12(1)(f) of RPS(AP)R 2009 (payment extinguishes the member’s entitlement to benefits)⁽²⁾, as the case may be, has ceased to be met in relation to the lump sum.

(2) The lump sum is treated as, and is treated as always having been, a small pot lump sum.

(3) In this regulation, “small pot lump sum” means a payment made in accordance with regulation 11 or 12 of RPS(AP)R 2009, as the case may be.

Commutation payment: additional lump sum paid for deceased member

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

- (a) an individual was paid a small pot lump sum,
- (b) the individual subsequently died,
- (c) as a result of the operation of a relevant rectification provision, a further lump sum (“the top-up lump sum”) is paid in respect of the individual, and
- (d) the top-up lump sum would have been a small pot lump sum if—
 - (i) the individual had still been living when it was paid, and
 - (ii) it had been paid to the individual.

(2) The top-up lump sum—

- (a) is to be treated as falling within section 164(1) of FA 2004 (authorised member payments)⁽³⁾, and

(1) By virtue of regulation 2(2)(a), “relevant rectification provision” is defined in regulation 2(1) of the 2023 Regulations.
(2) By virtue of regulation 2(2)(a), “RPS(AP)R 2009” means the Registered Pension Schemes (Authorised Payments) Regulations 2009 (S.I. 2009/1171) (see regulation 2(1) of the 2023 Regulations). Regulations 11 and 12 of RPS(AP)R 2009 were amended by section 42(6) of FA 2014 (c. 26), paragraph 73(1) and (3) of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30), and by S.I. 2011/1751.
(3) Section 164 of FA 2004 was amended by paragraph 6(a) to (c) of Schedule 23 to FA 2006, paragraph 1(1) and (2) of Schedule 29 to FA 2008 (c. 9), section 75(2)(a) of FA 2009 (c. 10), paragraphs 62 and 63 of Schedule 16 to FA 2011, paragraph 85 of Schedule 1 to the Taxation of Pensions Act 2014 and paragraph 3(1)(a) of Schedule 6 to FA 2016 (c. 24).

(b) is to be treated as a trivial commutation lump sum(4) paid under a registered pension scheme(5) for the purposes of Part 9 of ITEPA 2003 (pension income)(6).

(3) Regulation 3 of RPS(AP)R 2009 (provision of information by scheme administrator to the Commissioners) does not apply in relation to the top-up lump sum.

(4) In this regulation, “small pot lump sum” means a payment made in accordance with regulation 11 or 12 of RPS(AP)R 2009, as the case may be.

Trivial commutation lump sum death benefit: lump sum already paid

10.—(1) Paragraph (2) applies where—

- (a) an individual has been paid a lump sum that, disregarding the relevant rectification provisions, is a trivial commutation lump sum death benefit(7), and
- (b) as a result of the operation of a relevant rectification provision, the condition in paragraph 20(1A)(b) of Schedule 29 to FA 2004 (extinguishment of rights) has ceased to be met in relation to the lump sum.

(2) The lump sum is treated as, and is treated as always having been, a trivial commutation lump sum death benefit.

Arrears of dependants’ scheme pension in payment: additional amounts paid for deceased member

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

- (a) a person has become entitled to a dependants’ scheme pension(8) under a Chapter 1 scheme, a judicial 2015 scheme or a local government new scheme(9),
- (b) as a result of the operation of a relevant rectification provision, the amount of dependants’ scheme pension payable under the relevant scheme increases, and
- (c) the dependant has died or is a former child dependant.

(2) The increased amount of dependants’ scheme pension payable—

- (a) is to be treated as falling within section 164(1) of FA 2004 (authorised member payments),
- (b) is to be treated as pension paid under a registered pension scheme for the purposes of Part 9 of ITEPA 2003 (pension income)(10), and
- (c) is to be treated for those purposes as pension accruing—

(4) By virtue of regulation 2(2)(b), “trivial commutation lump sum” is defined in paragraph 7 of Schedule 29 to FA 2004. Paragraph 7 was amended by paragraphs 23 and 29 of Schedule 16 to FA 2011, section 42(1) of FA 2014, paragraph 71 of Schedule 1 to the Taxation of Pensions Act 2014 and paragraph 7 of Schedule 5 to FA 2016.

(5) By virtue of regulation 2(2)(b), “pension scheme” is defined in section 150(1) of FA 2004.

(6) 2003 c. 1. In these Regulations, “ITEPA 2003” is defined as the Income Tax (Earnings and Pensions) Act 2003 by section 103 of FA 2022 (and “ITEPA 2003” has the same meaning in these footnotes). Chapter 15A (applying to lump sums paid under a registered pension scheme) was inserted into Part 9 of ITEPA 2003 by paragraph 11 of Schedule 31 to FA 2004 and amended by paragraph 59 of Schedule 10 to FA 2005, paragraph 28 of Schedule 19 and paragraph (1) of Schedule 27 to FA 2007, paragraph 42 of Schedule 16 to FA 2011, paragraph 5(3) of Schedule 5 to FA 2014, paragraphs 31 and 62 of Schedule 1, and paragraph 19(3) of Schedule 2, to the Taxation of Pensions Act 2014, section 22 of F(No. 2)A 2015, paragraphs 2 and 8 of Schedule 5 to FA 2016, and by S.I. 2006/569 and S.I. 2006/572.

(7) By virtue of regulation 2(2)(b), “trivial commutation lump sum death benefit” is defined in paragraph 20 of Schedule 29 to FA 2004. Paragraph 29 was amended by paragraph 6 of Schedule 18 to FA 2011 and paragraph 74 of Schedule 1 to the Taxation of Pensions Act 2014.

(8) By virtue of regulation 2(2)(b), “dependants’ scheme pension” is defined in paragraph 16 of Schedule 28 to FA 2004.

(9) By virtue of regulation 2(2)(a), “local government new scheme” has the same meaning as in Chapter 3 of Part 1 of PSPJOA 2022 (see section 86(2) of that Act).

(10) Chapter 5A (applying to pensions paid under a registered pension scheme) was inserted into Part 9 of ITEPA 2003 by paragraph 6 of Schedule 36 to FA 2004 and amended by paragraph 22 of Schedule 16 to FA 2011, paragraph 117 of Schedule 45 to FA 2013, paragraphs 81 and 82 of Schedule 1, and paragraph 25 of Schedule 2, to the Taxation of Pensions Act 2014, paragraph 23 of Schedule 4 to FA 2015 (c. 11) and section 22(6) and (7) of F(No. 2)A 2015.

- (i) in the tax year in which it is paid, if it is paid to a dependant’s personal representative, or
- (ii) in the tax year in which it should have been paid, if it is paid to a former child dependant.

(3) But paragraph (2) does not apply unless the increased amount of dependants’ scheme pension is paid to—

- (a) the dependant’s personal representative, in a case where the dependant has died, or
- (b) a former child dependant.

(4) In this regulation, “former child dependant” means an individual who previously met one of the conditions in paragraph 15(2) of Schedule 28 to FA 2004 (meaning of child dependant)(11), but no longer meets any of those conditions when the increased amount of dependants’ scheme pension is paid.

Reduction of scheme pension where pension credit adjusted

12.—(1) Paragraph (2) applies where—

- (a) a relevant pension credit member has become entitled to a scheme pension(12),
- (b) the pension credit of that member is adjusted by provision made under section 19 or 57 of PSPJOA 2022 (pension credit members), and
- (c) as a result of that adjustment, the rate of the scheme pension payable to that member reduces.

(2) The reduction in the rate of the scheme pension does not prevent it from meeting the condition in paragraph 2(3)(b) of Schedule 28 to FA 2004 (requirement that rate of scheme pension does not reduce)(13).

(3) In this regulation, “relevant pension credit member” has the meaning given in section 19(2) or 57(2) of PSPJOA 2022, as the case may be.

Reduction of scheme pension in respect of voluntary contributions rights

13.—(1) Paragraph (2) applies where—

- (a) a member of a Chapter 1 scheme has become entitled to a scheme pension,
- (b) that member’s rights to additional benefits are varied or extinguished in accordance with provision made by virtue of section 20 of PSPJOA 2022 (voluntary contributions), and
- (c) as a result of that variation or extinguishment, the rate of the scheme pension payable to that member reduces.

(2) The reduction in the rate of the scheme pension does not prevent it from meeting the condition in paragraph 2(3)(b) of Schedule 28 to FA 2004 (requirement that rate of scheme pension does not reduce).

Reduction of local government scheme pension in accordance with scheme regulations

14.—(1) Paragraph (2) applies where—

(11) Paragraph 15 of Schedule 28 to FA 2004 was amended by paragraph 26 of Schedule 10 to FA 2005, paragraph 6(2) of Schedule 5 to FA 2016, and by [S.I. 2005/3229](#).

(12) By virtue of regulation 2(2)(b), “scheme pension” is defined in paragraph 2 of Schedule 28 to FA 2004.

(13) Paragraph 2 of Schedule 28 was amended by paragraph 64(1) of Schedule 10, and Part 4 of Schedule 11, to FA 2005, paragraph 20 of Schedule 23 to FA 2006, paragraphs 7(1) and (2) and 24(3) of Schedule 20 to FA 2007, section 20(1) to (4) of FA 2016, and by [S.I. 2007/493](#).

- (a) a member of a local government new scheme has become entitled to a scheme pension, and
- (b) the rate of the scheme pension payable to that member is reduced in accordance with provision made under section 78(1) of PSPJOA 2022 (final salary benefits in local government new scheme).

(2) The reduction in the rate of the scheme pension does not prevent it from meeting the condition in paragraph 2(3)(b) of Schedule 28 to FA 2004 (requirement that rate of scheme pension does not reduce).

Lump sum death benefit already paid: repayment of overpaid amount

15.—(1) Paragraph (2) applies where—

- (a) an individual has at any time been paid a defined benefits lump sum death benefit⁽¹⁴⁾ (“the original payment”) under a Chapter 1 scheme that met the conditions in paragraph 16(a) of Schedule 32 to FA 2004 (meaning of relevant lump sum death benefit: defined benefits lump sum death benefit)⁽¹⁵⁾,
- (b) the original payment includes an amount (“the overpaid DBLSDB”) that, as a result of the operation of a relevant rectification provision, was not payable to the individual, and
- (c) the liability under section 14(5) of PSPJOA 2022 (pension benefits and lump sum benefits) owed to the scheme in respect of the overpaid DBLSDB has been discharged in full.

(2) The amount crystallised by the benefit crystallisation event⁽¹⁶⁾ in connection with the individual’s entitlement to the original payment is to be treated as not including, and never having included, the overpaid DBLSDB.

Lifetime allowance excess lump sum: lump sum already paid

16.—(1) Paragraphs (2) to (5) apply where—

- (a) an individual has been paid a lump sum that, disregarding the operation of the relevant rectification provisions, is a lifetime allowance excess lump sum⁽¹⁷⁾, and
- (b) as a result of the operation of a relevant rectification provision, the condition in paragraph 11(a) of Schedule 29 to FA 2004 (unavailability of lifetime allowance⁽¹⁸⁾) has ceased to be met in relation to all or part of the lump sum (“the excess amount”).

(2) The excess amount—

- (a) is to be treated as falling, and is to be treated as always having fallen, within section 164(1) of FA 2004 (authorised member payments), and
- (b) is to be treated as being, and is to be treated as always having been, a lifetime allowance excess lump sum for the purposes of Part 9 of ITEPA 2003.

⁽¹⁴⁾ By virtue of regulation 2(2)(b), “defined benefits lump sum death benefit” is defined in paragraph 13 of Schedule 29 to FA 2004. Paragraph 13 was amended by paragraph 33 of Schedule 16 to FA 2011 and section 21(8) of F(No. 2)A 2015.

⁽¹⁵⁾ Paragraph 16 of Schedule 32 was amended by paragraph 19(2) of Schedule 2 to the Taxation of Pensions Act 2014 and section 21(7) of F(No. 2)A 2015.

⁽¹⁶⁾ By virtue of regulation 2(2)(b), events which are “benefit crystallisation events” in relation to an individual, and the amount which is crystallised by each of those events, are set out in section 216 of, and Schedule 32 to, FA 2004. Relevant amendments have been made to those provisions by paragraphs 8(2) to (6), 43(2) to (8) and 64(1) of Schedule 10 to FA 2005, paragraph 30 of Schedule 23 to FA 2006, section 92 of, and paragraphs 1, 5, 7, 8 and 10 of Schedule 29 to, FA 2008, paragraphs 43, 44, 62, 65, 73 and 80 of Schedule 16 to FA 2011, paragraphs 16, 26, 27, 61 and 76 of Schedule 1, and paragraphs 19(2), 21 and 24(1) to (3) of Schedule 2, to the Taxation of Pensions Act 2014, paragraphs 4 and 7(b) to (d) of Schedule 4 to FA 2015, section 21(7) of F(No. 2)A 2015, paragraph 18 of Schedule 4 to FA 2017 (c. 10) and section 24(8) of F(No. 2)A 2023.

⁽¹⁷⁾ By virtue of regulation 2(2)(b), “lifetime allowance excess lump sum” is defined in paragraph 11 of Schedule 29 to FA 2004.

⁽¹⁸⁾ By virtue of regulation 2(2)(b), “lifetime allowance” is defined in section 218 of FA 2004. Section 218 was amended by paragraph 2 of Schedule 18 to FA 2011, section 48(1) to (3) of, and paragraph 6 of Schedule 22 to, FA 2013, section 19(1) to (5) of FA 2016 and section 19 of F(No. 2)A 2023.

(3) The individual becoming entitled to the excess amount is to be treated as a benefit crystallisation event in relation to that individual.

(4) The amount crystallised for the purposes of that benefit crystallisation event is the amount of the excess amount.

(5) No liability to income tax arises in respect of 25% of the excess amount.

(6) In respect of 75% of the excess amount—

(a) the second lifetime allowance charge condition in section 214(3) of FA 2004 (lifetime allowance charge) is to be treated as met,

(b) that amount is to be treated as the basic amount for the purposes of section 215(3)(a) of FA 2004 (amount of charge), and

(c) the lifetime allowance charge which arises is to be charged at the rate of 40%.

Lifetime allowance excess lump sum already paid: repayment of overpaid amount

17.—(1) Paragraph (2) applies where—

(a) an individual has at any time been paid a lifetime allowance excess lump sum under a Chapter 1 scheme,

(b) the payment includes an amount (“the overpaid excess lump sum”) that, as a result of the operation of a relevant rectification provision, was not payable to the individual, and

(c) the liability under section 14(5) of PSPJOA 2022 (pension benefits and lump sum benefits) owed to the scheme in respect of the overpaid excess lump sum has been discharged in full.

(2) The amount crystallised by the benefit crystallisation event in connection with the individual’s entitlement to the lifetime allowance excess lump sum is to be treated as not including, and as never having included, the overpaid excess lump sum.

Additional lifetime allowance excess lump sum: age of individual

18.—(1) Paragraph (2) applies where—

(a) an individual has at any time been paid a lifetime allowance excess lump sum under a Chapter 1 scheme,

(b) as a result of the operation of a relevant rectification provision the individual is entitled to a new lifetime allowance excess lump sum, or to an increased amount of the original lifetime allowance excess lump sum (“the new lump sum”), and

(c) the individual no longer meets the condition in paragraph 11(e) of Schedule 29 to FA 2004 (lump sum paid when member under 75).

(2) The condition in paragraph 11(e) of Schedule 29 to FA 2004 is to be treated as met in respect of the new lump sum.

Lump sum unauthorised payment already paid: repayment of overpaid amount to scheme

19.—(1) Paragraph (2) applies where—

(a) an individual has at any time been paid a lump sum under a Chapter 1 scheme, all or part of which, disregarding paragraph (2), is an unauthorised member payment⁽¹⁹⁾,

(19) By virtue of regulation 2(2)(b), “unauthorised member payment” is defined in section 160(2) of FA 2004, which was relevantly amended by paragraph 3 of Schedule 23 to FA 2006.

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- (b) the payment includes an amount (“the unauthorised member overpayment”) that, as a result of the operation of a relevant rectification provision, was not payable to the individual, and
 - (c) the liability under section 14(5) of PSPJOA 2022 (pension benefits and lump sum benefits) owed to the scheme in respect of the unauthorised member overpayment has been discharged in full.
- (2) The unauthorised member overpayment is to be treated as falling, and as always having fallen, within section 164(1) of FA 2004 (authorised member payments).