This Statutory Instrument has been made to correct errors in S.I. 2023/766 and is being issued free of charge to all known recipients of that Statutory Instrument.

Draft Regulations laid before Parliament under section 24(1)(c) of the Public Service Pensions Act 2013, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2023 No.

PUBLIC SERVICE PENSIONS

The Judicial Pensions (Remediable Service etc.) (Amendment) Regulations 2023

Made - - - - ***

Coming into force in accordance with regulation 1(b)

The Lord Chancellor makes these Regulations in exercise of the powers conferred by sections 1(1) and (2)(b), 2(1) (as read with paragraph 2(1) of Schedule 2) and 3(1), (2)(a) (as read with paragraphs 2 and 9 of Schedule 3) and (c), and (3)(b) of the Public Service Pensions Act 2013(**a**) ("the 2013 Act") and sections 58(1) to (4), 67(2) and (3), 74(2) and 103(1) and (2) of the Public Service Pensions and Judicial Offices Act 2022(**b**) ("PSPJOA 2022").

In accordance with section 21 of, and paragraph 2(2) of Schedule 2 to, the 2013 Act, the Lord Chancellor has consulted the Secretary of State and such persons, and the representatives of such persons, as appear to the Lord Chancellor likely to be affected by these Regulations.

In accordance with section 3(5) of the 2013 Act, the Lord Chancellor has obtained the consent of the Treasury before making these Regulations.

The Lord Chancellor has had regard to the matters referred to in section 5(3) of the 2013 Act.

To the extent required by section 62 of PSPJOA 2022, these Regulations are made in accordance with Treasury directions made under that section.

A draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with section 24(1)(c) of the 2013 Act.

Citation, commencement and extent

1. These Regulations—

(**a**) 2013 c. 25. Section 3(1) was amended by section 94(2) of PSPJOA 2022, and section 3(2)(c) and (4A) were inserted by, respectively, section 94(3) and (4) of that Act.
(**b**) 2022 c. 7.

(a) may be cited as the Judicial Pensions (Remediable Service etc.) (Amendment) Regulations 2023;

(b) come into force on the day after the day on which they are made;

(c) extend to England and Wales, Scotland and Northern Ireland.

Amendment of the Judicial Pensions Regulations 2015

2.—(1) The Judicial Pensions Regulations 2015(**a**) are amended as follows.

(2) In regulation 2 (interpretation) for the definition of "active member"(**b**) substitute—

> ""active member", in relation to this scheme, means a person who is in pensionable service under this scheme;".

(3) After regulation 36 (application of chapter), insert—

"Purported transfer value payment

36A. In this Chapter, "purported transfer value payment" means a payment—

(a) which was made by either—

(i) a person "P" who has remediable service(**c**) in a judicial office; or

(ii) a relevant fee-paid judge(**d**) who has relevant service in a judicial office;

(b) which was intended to be a transfer value payment; and

(c) which was not a transfer value payment due to—

(i) a determination by a court or tribunal that, as a result of a non-discrimination rule(**e**), any person has rights under a judicial legacy scheme in respect of P's remediable service;

(ii) an agreement between the scheme manager of a judicial legacy scheme and any person that, as a result of a non-discrimination rule, the person has any rights under the scheme in respect of P's remediable service; or

(iii) the payment being made in relation to a relevant fee-paid judge.".

(4) For regulation 38A (accrued earned pension attributable to a transfer value payment where a legacy scheme election is made) substitute—

"Transfer value payment or purported transfer value payment in respect of judges with remediable service

38A.—(1) Paragraph (2) applies where—

(a) a person "P" has remediable service in a judicial office;

(b) one or more purported transfer value payments were made in relation to P during the period of remediable service;

(c) an immediate detriment remedy(**f**) has been obtained in relation to the period of remediable service; and

(d) no payment has been made to P, or to another pension scheme on behalf of P, of a value which represents the full value of P's purported transfer value payments (as referred to in sub-paragraph (b)).

(**a**) S.I. 2015/182 as amended by S.I. 2017/508, S.I. 2021/36, S.I. 2022/319 and S.I. 2023/766.
(**b**) The definition of "active member" was substituted by S.I. 2023/766.
(**c**) See section 39 of PSPJOA 2022 for the meaning of "remediable service".
(**d**) See section 103(3) of PSPJOA 2022 for the meaning of "relevant fee-paid judge".
(**e**) See section 68(4) of PSPJOA 2022 for the meaning of "non-discrimination rule".
(**f**) See section 68 of PSPJOA 2022 for provision about whether an "immediate detriment remedy" has been obtained.

(2) The purported transfer value payments referred to in paragraph (1)(b) are to be treated as having been received by this scheme and P is to be treated as an active member of this scheme for all purposes in connection with the purported transfer value payments.

(3) Paragraph (4) applies where—

(a) a person "P" has remediable service in a judicial office;

(b) one or more transfer value payments have been received by this scheme in relation to P during the period of remediable service; and

(c) a legacy scheme election under section 40 of PSPJOA 2022 is made in respect of P.

(4) P is to be treated as an active member of this scheme for all purposes in connection with the transfer value payments referred to in paragraph (3)(b).".

(5) For regulation 38B (accrued earned pension attributable to a transfer value payment in respect of relevant fee-paid judges) substitute—

"Purported transfer value payment in respect of relevant fee-paid judges

38B.—(1) Paragraph (2) applies where—

(a) a relevant fee-paid judge "R" has relevant service in a judicial office; and

(b) one or more purported transfer value payments were made in relation to R during the period of relevant service.

(2) The purported transfer value payments referred to in paragraph (1)(b) are to be treated as having been received by this scheme and R is to be treated as an active member of this scheme for all purposes in connection with the purported transfer value payments.".

(6) In Schedule 1 (payments for extra pension)—

(a) in paragraph 1 (interpretation), after the definition of "period of service", insert—

""purported added pension payment" means a payment—

(a) which was made by either—

(i) a person "P" who has remediable service in a judicial office; or

(ii) a relevant fee-paid judge who has relevant service in a judicial office;

(b) which was intended to be an added pension payment under this Part; and

(c) which was not an added pension payment under this Part due to—

(i) a determination by a court or tribunal that, as a result of a non-discrimination rule, any person has rights under a judicial legacy scheme in respect of P's remediable service;

(ii) an agreement between the scheme manager of a judicial legacy scheme and any person that, as a result of a non-discrimination rule, the person has any rights under the scheme in respect of P's remediable service; or

(iii) the payment being made in relation to a relevant fee-paid judge;";

(b) for paragraph 23A (added pension in respect of judges with remediable service) substitute—

"Added pension payment or purported added pension payment in respect of judges with remediable service

23A.—(1) Sub-paragraph (2) applies where—

(a) a person "P" has remediable service in a judicial office;

(b) one or more purported added pension payments were made by P during the period of remediable service;

(c) an immediate detriment remedy has been obtained in relation to the period of remediable service;

(d) the notification period in relation to P under regulation 14(2) of the 2023 Regulations has passed;

(e) a request has not been made in respect of P under regulation 24 of the 2023 Regulations; and

(f) no payment has been made to P of a value which represents the full value of P's purported added pension payments (as referred to in paragraph (b)).

(2) The purported added pension payments referred to in sub-paragraph (1)(b) are to be treated as having been received by this scheme and P is to be treated as an active member of this scheme for all purposes in connection with the purported added pension payments.

(3) Sub-paragraph (4) applies where—

(a) a person "P" has remediable service in a judicial office;

(b) P made one or more added pension payments during the period of remediable service;

(c) a legacy scheme election under section 40 of PSPJOA 2022 is made in respect of P;

(d) the election period in relation to P under section 69(1) of PSPJOA 2022 has passed; and

(e) a request has not been made in respect of P under regulation 8 of the 2023 Regulations.

(4) P is to be treated as an active member of this scheme for all purposes in connection with the added pension payments referred to in sub-paragraph (3)(b).";

(c) for paragraph 23B (added pension in respect of relevant fee-paid judges) substitute—

"Purported added pension in respect of relevant fee-paid judges

23B.—(1) Sub-paragraph (2) applies where—

(a) a relevant fee-paid judge "R" has relevant service in a judicial office;

(b) one or more purported added pension payments were made by R during the period of relevant service;

(c) the notification period in relation to R under regulation 30(2)(b) of the 2023 Regulations has passed; and

(d) a request has not been made in respect of R under regulation 40 of the 2023 Regulations.

(2) The purported added pension payments referred to in sub-paragraph (1)(b) are to be treated as having been received by this scheme and R is to be treated as having been an active member of this scheme for all purposes in connection with the purported added pension payments.".

Amendment of the Judicial Pensions (Remediable Service etc.) Regulations 2023

3.—(1) The Judicial Pensions (Remediable Service etc.) Regulations 2023(**a**) are amended as follows.

(2) In regulation 2 (interpretation) after the definition of "Judicial Pension Board" insert—

""purported added pension payment" has the meaning given in paragraph 1 of Schedule 1 to the 2015 Regulations;

"purported effective pension age payment" means a payment—

(a) which was made by either—

(**a**) S.I. 2023/766.

(i) a person "P" who has remediable service in a judicial office, or

(ii) a relevant fee-paid judge who has relevant service in a judicial office,

(b) which was intended to be an effective pension age payment under Part 3 of Schedule 1 to the 2015 Regulations, and

(c) which was not in fact an effective pension age payment under Part 3 of Schedule 1 to the 2015 Regulations due to—

(i) a determination by a court or tribunal that, as a result of a non-discrimination rule, any person has rights under a judicial legacy scheme in respect of P's remediable service,

(ii) an agreement between the scheme manager of a judicial legacy scheme and any person that, as a result of a non-discrimination rule, the person has any rights under the scheme in respect of P's remediable service, or

(iii) the payment being made in relation to a relevant fee-paid judge;

"purported special payment" means a payment—

(a) which was made by either—

(i) a person "P" who has remediable service in a judicial office, or

(ii) a relevant fee-paid judge who has relevant service in a judicial office,

(b) which was intended to be a special payment under regulation 74(3)(a) or (c) of the 2015 Regulations, and

(c) which was not in fact a special payment under regulation 74(3)(a) or (c) due to—

(i) a determination by a court or tribunal that, as a result of a non-discrimination rule, any person has rights under a judicial legacy scheme in respect of P's remediable service,

(ii) an agreement between the scheme manager of a judicial legacy scheme and any person that, as a result of a non-discrimination rule, the person has any rights under the scheme in respect of P's remediable service, or

(iii) the payment being made in relation to a relevant fee-paid judge;".

(3) In regulation 18 (partial retirement notice)—

(a) in paragraph (1)(a), for "exercised" substitute "purported to exercise";

(b) in paragraph (3), before "exercise" insert "purported".

(4) In regulation 19 (effect of immediate detriment remedy on benefits previously paid or payable)—

(a) in paragraph (1)—

(i) in the opening words, for "benefits ("the paid benefits") that the 2015 scheme has at any time paid" substitute "payments purporting to be benefits that the 2015 scheme has at any time paid ("the purported benefits")";

(ii) in sub-paragraph (b)—

(aa) for "benefits" substitute "payments";

(bb) after "receive", insert "as benefits";

(b) in paragraph (2) for "The paid benefits", substitute "The purported benefits";

(c) in paragraph (3)—

(i) in the opening words, for "benefits ("the paid benefits") that the 2015 scheme has at any time paid" substitute "payments purporting to be benefits that the 2015 scheme has at any time paid ("the purported benefits")";

(ii) in sub-paragraph (b)—

(aa) for "benefits" substitute "payments";

(bb) after "receive", insert "as benefits";

(d) in paragraph (4) for "The paid benefits", substitute "The purported benefits".

(5) In regulation 20 (effect of immediate detriment remedy on pension contributions previously paid or payable)—

(a) in paragraph (1)—

(i) in the opening words, for "paid any pension contributions ("the paid contributions") under the 2015 scheme" substitute "made any payments purporting to be pension contributions under the 2015 scheme ("the purported contributions")";

(ii) in sub-paragraph (b) for "P was not required to pay to the 2015 scheme", substitute "were not payments that P was required to make under the 2015 scheme";

(b) in paragraph (2) for "The paid contributions", substitute "The purported contributions";

(c) in paragraph (3)—

(i) in the opening words, for "paid any pension contributions ("the paid contributions") under the 2015 scheme" substitute "made any payments purporting to be pension contributions under the 2015 scheme ("the purported contributions")";

(ii) in sub-paragraph (b) for "P was not required to pay to the 2015 scheme", substitute "were not payments that P was required to make under the 2015 scheme";

(d) in paragraph (4) for "The paid contributions", substitute "The purported contributions".

(6) In regulation 23 (compensation for special payments to buy out early payment reduction)—

(a) immediately before "special payments", in each place it occurs (including in the heading), insert "purported";

(b) in paragraph (1) omit "under regulation 74(3)(a) or (c) of the 2015 Regulations";

(c) in paragraph (2)—

(i) for "The rights" substitute "For the avoidance of doubt, any rights";

(ii) after "payments" insert ", had P been entitled to make them,";

(d) in paragraph (3)(b)—

(i) for "was" substitute "would have been";

(ii) at the end, insert "had P been entitled to make them".

(7) In regulation 24 (compensation for payments for added pension)—

(a) immediately before "added pension", in each place it occurs (including in the heading), insert "purported";

(b) in paragraph (1)(a), omit "under Part 2 of Schedule 1 to the 2015 Regulations";

(c) in paragraph (2)(a)—

(i) for "the rights" substitute "for the avoidance of doubt, any rights";

(ii) after "payments" insert ", had P been entitled to make them,";

(d) in paragraph (2)(b)(ii)—

(i) for "was" substitute "would have been";

(ii) at the end, insert "had P been entitled to make them".

(8) In regulation 25 (compensation for effective pension age payments)—

(a) immediately before "effective pension age payments", in each place it occurs (including in the heading), insert "purported";

(b) in paragraph (1), omit "under Part 3 of Schedule 1 to the 2015 Regulations";

(c) in paragraph (2)—

(i) for "The rights" substitute "For the avoidance of doubt, any rights";

(ii) after "payments" insert ", had P been entitled to make them,";

(d) in paragraph (3)(b)—

(i) for "was" substitute "would have been";

(ii) at the end, insert "had P been entitled to make them".

(9) In regulation 35 (benefits previously paid or payable)—

(a) in paragraph (1)—

(i) in the opening words, for "benefits ("the paid benefits") that the 2015 scheme has at any time paid" substitute "payments purporting to be benefits that the 2015 scheme has at any time paid ("the purported benefits")";

(ii) in sub-paragraph (b)—

(aa) for "benefits" substitute "payments";

(bb) after "receive", insert "as benefits";

(b) in paragraph (2) for "The paid benefits", substitute "The purported benefits";

(c) in paragraph (3)—

(i) in the opening words, for "benefits ("the paid benefits") that the 2015 scheme has at any time paid" substitute "payments purporting to be benefits that the 2015 scheme has at any time paid ("the purported benefits")";

(ii) in sub-paragraph (b)—

(aa) for "benefits" substitute "payments";

(bb) after "receive", insert "as benefits";

(d) in paragraph (4) for "The paid benefits", substitute "The purported benefits".

(10) In regulation 36 (pension contributions previously paid or payable)—

(a) in paragraph (1)—

(i) in the opening words, for "paid any pension contributions ("the paid contributions") under the 2015 scheme" substitute "made any payments purporting to be pension contributions under the 2015 scheme ("the purported contributions")";

(ii) in sub-paragraph (b), at the beginning, insert "were payments which,";

(b) in paragraph (2) for "The paid contributions", substitute "The purported contributions";

(c) in paragraph (3)—

(i) in the opening words, for "paid any pension contributions ("the paid contributions") under the 2015 scheme" substitute "made any payments purporting to be pension contributions under the 2015 scheme ("the purported contributions")";

(ii) in sub-paragraph (b), at the beginning, insert "were payments which,";

(d) in paragraph (4) for "The paid contributions", substitute "The purported contributions".

(11) In regulation 39 (compensation for special payments to buy out early payment reduction)—

(a) immediately before "special payments", in each place it occurs (including in the heading), insert "purported";

(b) in paragraph (1) omit "under regulation 74(3)(a) or (c) of the 2015 Regulations";

(c) in paragraph (2)—

(i) for "The rights" substitute "For the avoidance of doubt, any rights";

(ii) after "payments" insert ", had R been entitled to make them,";

(d) in paragraph (3)(b)—

(i) for "was" substitute "would have been";

(ii) at the end, insert "had R been entitled to make them".

(12) In regulation 40 (compensation for payments for added pension)—

(a) immediately before "added pension", in each place it occurs (including in the heading), insert "purported";

(b) in paragraph (1)(a), omit "under Part 2 of Schedule 1 to the 2015 Regulations";

(c) in paragraph (2)(a)—

(i) for "the rights" substitute "for the avoidance of doubt, any rights";

(ii) after "payments" insert ", had R been entitled to make them,";

(d) in paragraph (2)(b)(ii)—

(i) for "was" substitute "would have been";

(ii) at the end, insert "had R been entitled to make them".

(13) In regulation 41 (compensation for effective pension age payments)—

(a) immediately before "effective pension age payments", in each place it occurs (including in the heading), insert "purported";

(b) in paragraph (1), omit "under Part 3 of Schedule 1 to the 2015 Regulations";

(c) in paragraph (2)—

(i) for "The rights" substitute "For the avoidance of doubt, any rights";

(ii) after "payments" insert ", had R been entitled to make them,";

(d) in paragraph (3)(b)—

(i) for "was" substitute "would have been";

(ii) at the end, insert "had R been entitled to make them".

Name
Lord Chancellor
Ministry of Justice

Date

We consent to the making of these Regulations

Name
Name
Two of the Lords Commissioners of His Majesty's Treasury

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Public Service Pensions and Judicial Offices Act 2022 (c. 7) ("PSPJOA 2022") was made to remedy age discrimination caused by transitional provision contained in the Judicial Pensions Regulations 2015 (S.I. 2015/182) ("the 2015 Regulations"). The Judicial Pensions (Remediable Service etc.) Regulations 2023 (S.I. 2023/766) ("the 2023 Regulations") were made under PSPJOA 2022 to implement it and make further technical provision for judicial schemes.

These Regulations make technical amendments to the 2015 Regulations and the 2023 Regulations, in relation to payments purportedly made to the judicial pension scheme 2015 ("the 2015 scheme"). These payments were not in fact made to or received by the judicial pension scheme,

due to the operation of anti-discrimination rules. These amendments are intended to clarify that some references to payments made under or received by the 2015 scheme were intended to be references to payments purported to have been made under or received by that scheme. This ensures that the remedy can be delivered in relation to those payments.

These Regulations are scheme regulations under the Public Service Pensions Act 2013 (c. 25) ("PSPA 2013") and in accordance with PSPJOA 2022 in relation to a member's remediable service in the judicial legacy schemes (as defined in section 70(3) of PSPJOA 2022) and in the 2015 scheme. They are, to the extent required by section 62 of PSPJOA 2022, made in accordance with Treasury directions under that section (in the form of the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022). To the extent that these Regulations have retrospective effect, this is authorised by section 3(3)(b) of PSPA 2013.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum has been published alongside these Regulations on http://www.legislation.gov.uk.

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