EXPLANATORY MEMORANDUM TO

THE PUBLIC SERVICE PENSION SCHEMES (RECTIFICATION OF UNLAWFUL DISCRIMINATION) (TAX) REGULATIONS 2026

2026 No. 673

1. Introduction

1.1 This Explanatory Memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury (HM Treasury) and is laid before the House of Commons by Command of His Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Declaration

2.1 Torsten Bell MP, Minister for Pensions at the Department for Work and Pensions and HM Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 Gareth Cooper, Deputy Director for Public Service Pensions Remedy, Individuals Policy Directorate at HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Beverley Davies at HMRC can be contacted by email at the following address with any queries regarding the instrument: policypensions@hmrc.gov.uk. Alternatively, the department can be contacted by telephone: 03000 512336.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes further provision in connection with the remedy of the unlawful age discrimination identified in certain public service pension scheme reforms. Specifically, this instrument addresses a number of issues identified in delivering the remedy, covering the administration of Scheme Pays and the submission of specified information to HMRC, and the correction of unintended tax consequences for immediate detriment members of Judicial schemes, certain members of the Armed Forces and Teachers schemes and a specific type of minor death benefit.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Part 1 of the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) remedies discrimination arising from transitional protection arrangements in connection with the public service pension scheme reforms put in place in 2014 and 2015, affecting over 3 million public sector workers. This is commonly known as "the McCloud remedy". The discriminatory features were removed from pension scheme rules from 1 April 2022. For the preceding "remedy period" (1 April 2015 to 31 March 2022) provisions to change the treatment of members of public service pension schemes affected by the discrimination were introduced from 1 October 2023. These provisions were retrospective for Chapter 1 schemes (schemes other than Judicial schemes and Local Government schemes) and Chapter 2 schemes (Judicial schemes), and prospective for Chapter 3 schemes (Local Government schemes).

5.2 The objective of the McCloud remedy is to put those affected in the position they would have been in if the discrimination had not occurred. This can lead to adverse tax consequences which have been addressed in The Public Service Pension Scheme (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 (SI 2023/113) ("the 2023 Regulations"), The Public Service Pension Scheme (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023 (SI 2023/912) ("the 2023 (No. 2) Regulations") and The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2025 (SI 2025/419).

5.3 The regulations listed above address the majority of the tax issues arising as a result of the remedy, but further tax legislation is needed to address a number of issues identified in delivering the remedy. Specifically, these issues cover administration and correcting unintended tax consequences for non-standard schemes and cases.

5.4 This instrument provides amendments to the process and administrative time limits for a scheme to pay annual allowance charges (known as "Scheme Pays") for their members that arise in the remedy period and/or the tax year 2022/23. It allows for members to make a request via HMRC's digital service for schemes to cover their annual allowance charge and extends the mandatory deadline for making a mandatory election from 6 July 2025 to 6 July 2027 for deferred choice members. It also provides a due date for payment of the annual allowance charge where the scheme administrator pays a member's annual allowance charge voluntarily. These changes smooth the process for members making a Scheme Pays election, including where they have yet to receive their remedy pension savings statements.

5.5 This instrument addresses issues for Judicial scheme members who required an Immediate Detriment remedy before 1 October 2023. For these members, the Immediate Detriment remedy extinguished any annual allowance charge in respect of remediable service benefits triggered in a Judicial 2015 scheme. The annual allowance does not apply to legacy benefits payable from a Judicial legacy scheme, as this is an unregistered scheme. This instrument removes the requirement for scheme administrators of a Judicial 2015 scheme to amend any accounting for tax return and allows recovery by Judicial 2015 schemes where such charges have been paid. It also ensures that the transfer and surrender of pension partnership accounts are treated as authorised transfers and do not invalidate any Fixed Protection 2016, preventing unintended tax consequences.

5.6 This instrument allows members of the Armed Forces Pension Scheme 1975 (AFPS 75) to choose reformed benefits for the remedy period, without being subject to

unintended tax consequences. This gives those members the same tax treatment as members of the Armed Forces Pension Scheme 2005 (AFPS 05) who make the same choice. It also addresses the tax treatment of benefits which were payable before age 55 in the AFPS 75 and become payable from the AFPS 05 due to the member's choice to receive reformed benefits for the remedy period.

5.7 This instrument authorises an increase to a trivial commutation lump sum death benefit ("TCLSDB") paid to a dependant's personal representative after their death, if the increase would have been a TCLSDB had it been paid to the dependant while alive. It addresses situations where the remedy cannot be given directly to the dependant due to their death. The provision is necessary because a TCLSDB cannot be paid posthumously under standard Finance Act 2004 rules and applies to both retrospective (Chapter 1 schemes) and prospective (Chapter 3 schemes) remedies.

5.8 This instrument ensures that individuals who have excess pensionable service for a teaching role during the remedy period (excess teacher service) have the appropriate tax treatment.

What was the previous policy, how is this different?

5.9 This instrument makes targeted technical changes to ensure the pensions tax framework works properly as the McCloud remedy is implemented in practice. It does not reopen core policy decisions, but it does alter certain statutory deadlines as described below.

5.10 The deadline for deferred choice members to submit their mandatory Scheme Pays notice relating to the remedy period and the tax year 2022/23 was 6 July 2025. This was because members needed to receive their pensions saving statement from the scheme administrator in order to decide whether to make a Scheme Pays election, and the deadline for this statement was 6 October 2024. From information gathered from schemes, many members did not receive their pensions savings statement by this deadline. In consequence, this instrument extends the deadline for deferred choice members to submit their Scheme Pays notice to 6 July 2027, and extends the deadline for deferred choice members to amend their Scheme Pays notice to 5 July 2032, to align with the deadline for immediate choice members.

5.11 There was previously no due date for the scheme administrator to pay the annual allowance charge for the remedy period or the tax year 2022/23, where this has been voluntarily agreed with the member. This meant that HMRC had to raise assessments in order to collect the tax. This was an administrative burden and meant that late payment interest and penalties started to accrue later than where a mandatory Scheme Pays notice was submitted. In consequence, this instrument provides for a due date for the scheme administrator to pay the annual allowance charge.

5.12 If the scheme administrator is late in issuing a pension saving statement and/or benefit crystallisation event statement for the remedy period and the tax year 2022/23, an extended deadline applies for the member to provide information about that period to HMRC. This extended deadline was three months after the statement is received by the member in all cases. This did not address the scenario where the member dies before the statement is issued, and so the statement is received by the personal representative. This instrument provides that in this scenario; the extended deadline is three months after the statement is received by the personal representative. This also provided for an unfair outcome where the member dies within three months of receiving the statement, as the personal representative may then have only a short time

in which to submit the information. This instrument provides that in this scenario, the extended deadline is three months after the death of the member.

6. Legislative and Legal Context

How has the law changed?

6.1 This instrument is made under the powers in section 11 of the Finance Act 2022 and modifies existing pensions tax legislation, in particular the 2023 Regulations, the 2023 No. 2 Regulations, the Finance Act 2004 and the Income Tax (Earning and Pensions) Act 2003 (ITEPA 2003). It also amends provisions of the 2023 Regulations and the 2023 (No. 2) Regulations.

6.2 This instrument amends the mandatory Scheme Pays provisions in the 2023 Regulations. These amendments enable individuals to submit Scheme Pays notices for the remedy period and the tax year 2022/23 either directly to scheme administrators or via HMRC. They also provide that notices submitted via HMRC are treated as received by the scheme when submitted to HMRC for the purposes of the statutory deadline for giving such notices. They also extend the statutory deadline for giving mandatory Scheme Pays notices to 6 July 2027, and the statutory deadline for amending such notices to 5 July 2032. They provide that where notices are submitted via HMRC, the scheme administrator will not become jointly and severally liable for the annual allowance charges specified in the notice until HMRC has transmitted the notice to the scheme.

6.3 This instrument modifies regulations 15, 42 and 43 of the 2023 Regulations in their application to members of Judicial schemes who received an Immediate Detriment remedy. These modifications replace references to PSPJOA with the corresponding provisions applicable to Immediate Detriment members in Part 3 of the Judicial Pensions (Remediable Service etc) Regulations 2023.

6.4 This instrument makes provision in relation to benefits equivalent to those payable under the Early Departure Payments 2015 Scheme which become payable from the AFPS 75 as a result of a remedy choice for reformed benefits. It ensures that these benefits are treated as being paid from a separate part of the AFPS 75. This separate part is treated as an employer-financed retirement benefits scheme and is therefore disregarded for the purposes of Part 4 of the Finance Act 2004. It also applies the appropriate income tax treatment to those benefits paid in lump sum form under ITEPA 2003.

6.5 This instrument makes provision in relation to benefits equivalent to those payable under the AFPS 75 which become payable from the AFPS 05 as a result of a remedy choice for reformed benefits. It ensures that the member's normal minimum pension age in relation to these benefits is treated as being the protected pension age that would have applied to the member in relation to the AFPS 75 under paragraph 22, Schedule 36, Finance Act 2004.

6.6 This instrument provides that where an increase is due in respect of a TCLSDB, and the increase is paid to a personal representative after the death of the dependant, then provided that the increase would have been a TCLSDB if it had been paid to the dependant, the increase is to be treated as an authorised payment under section 164, Finance Act 2004 and as a TCLSDB for income tax purposes under Part 9, ITEPA 2003.

6.7 This instrument establishes a statutory payment deadline where a scheme agrees to pay an annual allowance charge under voluntary Scheme Pays for the remedy period

and/or the tax year 2022/23. It requires payment within 45 days after the end of the quarter in which the request is received by the scheme and provides that requests submitted via HMRC are treated as received when transmitted to the scheme.

6.8 This instrument amends regulation 32 of the 2023 (No. 2) Regulations to revise the due dates for providing specified information, as described in paragraph 5.12 above.

6.9 This instrument makes provision in relation to excess teacher service which has been rolled-back to the new local government pension scheme. It ensures that any increase in pension benefits attributable to the final salary underpin is disregarded when calculating pension input amounts.

Why was this approach taken to change the law?

6.10 This is the only possible approach that would provide the required policy outcome of aiming to, broadly, put individuals with remediable service in public service pension schemes in the tax position they would have been in had the discrimination not happened.

7. Consultation

Summary of consultation outcome and methodology

7.1 Informal technical consultations with public service pension scheme stakeholders were held to review draft regulations and guidance. Schemes generally supported the approach, mainly requesting clarification on process implications, deadlines and timescales which will be addressed through published guidance.

7.2 A more formal technical consultation was not considered necessary as the policy and approach was developed in conjunction with public service pension scheme stakeholders, and some provisions only impact a limited number of public service pension schemes.

8. Applicable Guidance

8.1 We currently anticipate full guidance to be released through a future McCloud pension scheme newsletter, as has been the case with previous McCloud regulations.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A Tax Information and Impact Note covering this instrument was published on 27 October 2021, alongside the Finance Bill, and is available on the gov.uk website[1]. It remains an accurate summary of the impacts that apply to this instrument.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the issues in this instrument arise within public service pension schemes.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because this instrument makes amendments to support the administration of the existing public service pension schemes remedy and to ensure that unintended tax consequences do not arise

[1] Tax Information and Impact Note: https://www.gov.uk/government/publications/taxation-of-public-service-pension-reform-remedy/taxation-of-public-service-pension-reform-remedy.

from its implementation. Any impacts on public service pension schemes and HMRC are expected to be limited to minor administrative adjustments associated with delivering the remedy more effectively.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that it will be monitored through communications with the relevant pension schemes and taxpayer groups.

10.2 The instrument does not include a statutory review clause as it falls within section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument makes retrospective provision which is authorised by section 11(4)(a) of FA 2022. This is necessary because the McCloud remedy applies retrospectively to Chapter 1 and 2 schemes.

12. European Convention on Human Rights

12.1 The Minister for Pensions has made the following statement regarding Human Rights: "In my view the provisions of the Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").