



GUIDANCE ON THE PUBLIC SERVICES PENSION SCHEMES (RECTIFICATION OF UNLAWFUL DISCRIMINATION) (TAX) REGULATIONS 2023

RESPONSE FROM THE ASSOCIATION OF LOCAL AUTHORITY CHIEF EXECUTIVES AND SENIOR MANAGERS

January 2023

The Association of Local Authority Chief Executives and Senior Managers (ALACE) is a registered trade union. It represents only the most senior managers in principal authorities and other local government bodies. We welcome the opportunity to comment on the draft guidance. Some of our current and previous members will have been adversely affected by the pension reforms that gave rise to the Public Service Pensions and Judicial Offices Act 2022 and the draft regulations. While the number of members of the Local Government Pension Scheme affected is likely to be a relatively small percentage of total LGPS membership, the likelihood is that it will be a higher proportion of the ALACE membership given the age and salary profile of our members.

The cost of rectification

In local government, the principal cost of rectification will fall on pension funds, with the beneficiaries being the individuals who were adversely affected by the pension reforms and will now receive additional one off and/or ongoing payments – and the Government in the guise of HMRC which will receive higher tax receipts as a result. However there are likely to be additional fund administration costs, in respect of software development, building expertise to deal with the case work generated and most specifically helping the individual member to understand what's happening, providing reassurance on the accuracy and validity of the calculations and helping fund members deal with HMRC.

It is important that Fund Administrators are able to understand the rules and new regulations. It is also critically important that Scheme Members that are affected by the underpin understand and get appropriate support from their Fund Administrators. For all parties, it is important that the Regulations result in comprehensible outcomes and make the administration as easy as it can be given the circumstances. It is recognised that the regulations and accompanying draft guidance are of the utmost complexity. We wish to register concern about the ability of Administering Authorities within the local government pension scheme to calculate the changes correctly and provide support to members in dealing with the potential for additional, retrospective tax charges. It will be important for all concerned that rectification is administered correctly and does not give rise to further problems or complaints of maladministration etc.

The interaction of these changes with the taxation system is further strong evidence of why the Government should raise the levels of the lifetime allowance and the

annual allowance from their historic real term lows, to minimise the further massive complexity that they bring to pension administration in this context.

Response from ALACE

We therefore raise three suggestions.

The first is that **the changes that are required by the 2022 Act and the draft regulations represent a new burden for local government and at least the administrative costs of implementing them (including any adjustments to IT systems) and support for Scheme members having to deal with the retrospective changes should be assessed by DLUHC/Treasury under the new burdens doctrine and funded by the Government.** The Government has direct responsibility for the discriminatory legislation that has given rise to the 2022 Act, and it should therefore bear the cost of remedying the problems it has created. It would be inappropriate for local government pension funds to have to bear those costs, as that would indirectly pass the financial burden onto employing authorities through the pension contributions that they have to make. The Government should not expect these administrative costs to be covered by returns on pension fund investments.

Second, and consistent with the principle that the Government should pay for its mistakes, **we feel that individuals should not have to face additional taxation charges as a consequence of rectification of past errors.** We appreciate that the individuals concerned will receive higher one off and/or ongoing payments as a result of the rectification process. Any ongoing payments will in most cases be liable to income tax. Retrospectively requiring recalculation not only of pension payments but also of potential lifetime allowance and/or annual allowance charges adds an unnecessary degree of complexity that could be avoided. The Government should instead provide in the regulations that, in the event of higher retrospective payments, no additional lifetime allowance or annual allowance charges would be levied. That would seem to us to represent reasonable compensation for the discrimination to which individuals have been subjected.

We accept that, if rectification leads to a downwards retrospective adjustment in pension and therefore the possibility that an individual should be repaid some or all of a previous tax charge, that complexity cannot be avoided and the individual should be paid a refund of tax.

Third, we would suggest that **the draft guidance note should be restructured so that the information relating to Chapter 1, Chapter 2 or Chapter 3 schemes is brigaded together into separate sections so that individuals, pension administrators and others have to concern themselves only with material that is relevant to their situation or issues.** Thus all the material affecting local government (= Chapter 3 schemes) would be in one place and not scattered throughout the document. Even if restructuring the guidance note in this way meant that some material that was relevant to all three types of scheme had to be repeated, that would be preferable to the current structure which makes it less easy to find the information that is relevant to any given case.