By email to - pensions.policy@hmrc.gov.uk
HM Revenue & Customs

19 June 2023

The Public Services Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023

Please accept this response to the Rectification of unlawful discrimination (tax) (No.2) regulations 2023 on behalf of the Police Pension Scheme (PPS). Chief Constables have the role of scheme manager for the PPS and NPCC is the national body representing Chiefs in their role as scheme manager, as such we are responding on behalf of all Chief Constables in their role as scheme managers.

We welcome the opportunity to respond to this consultation and thank HMRC representatives for an informative and useful round table session to go through the tax regulations.

However, we must note that the approach and timetabling of the tax regulations has been disappointing. We note that the tax remedy has often been referred to as complex, but this is not surprising, and was referenced early in the remedy process when HMT first informally consulted SABs on an immediate or deferred choice approach to remedy. It was pointed out then that the tax consequence of either approach would be complicated and would need time to consider properly.

> *Pension tax is an extremely complex area and in the absence of clear proposals to streamline the provision of information across the workforce it would be prudent to focus on developing proposals that allow this workload to be spread over a longer period.*

This was further exacerbated, by HMT and Home Office first issuing immediate detriment guidance in August 2020 with no clear tax guidance and later withdrawing the immediate detriment guidance in December 2021 because of unintended tax consequences, that they were seemingly not aware of when they issued the guidance in August 2020.

Despite this clear need for tax regulations to have been developed early on, the tax regulations have been developed late and with no clear cohesiveness about how schemes will build processes to comply. Home Office have told us that this delay in confirming tax policy has had an impact on their own consultation, which as a result they do not expect to lay regulations until after recess in September 2023, less than a month from the implementation date. We note that there were 19 weeks between the first set of draft tax regulations and the second. It would have been preferable for one set of amending tax regulations to have been consulted on in good time than the need to refer to two sets of documents. We also note that we did not receive a response to the first consultation response.

These delays have all contributed to delays in building processes and communicating with members.

You will know that public sector schemes are divided between locally administered schemes and integrated, centrally administered schemes, which have one Scheme Manager, a single administrator and a single, integrated administration model and system. The police scheme is known as a locally administered, unfunded schemes: each police force is a Scheme Manager, responsible for establishing their own administration arrangements, whether in house, provided by e.g. a local authority (LGPS) administrator or outsourced to a commercial provider. In policing there are 13 different administrators appointed across the 43 Police forces using three different software systems.

This makes co-ordination of administration resource across forces more complex and difficult. Because schemes are unfunded, all administration costs must be met from police operational budgets, which impacts directly on resource for fighting crime and delivery of operational policing. Therefore, policing seeks clarity of intent to ensure no ambiguity or scope for varying interpretation. This may not be such an important requirement for centrally administered, integrated schemes, but is necessary for locally administered schemes. For example, in policing each Scheme Manager interacts with HMRC through their own channel and arrangements for AFT reporting.

While we understand that for the purpose of the tax regulations and in accordance with section 270 of the Finance Act 2004, the scheme administrator is a reference to the scheme manager. The Chief Constable, in their role of Scheme Manager, relies heavily on the expertise of the appointed pension administrator to comply with the tax regulations and will rely on the pension administrator to undertake the 'rollback' provisions under the PSPJOA 2022. We have attempted to mitigate this by providing HMRC with a central contact for scheme managers through NPCC but despite recent correspondence, HMRC will not discuss with NPCC how they will build processes to work with police scheme managers in this framework.

Comments on the impact of regulations

1. We note and welcome that in the main the regulations do the 'heavy lifting' to ensure that payments made due to the rectification of discrimination will be considered as authorised payments and put the member in the position they would have been in if not for the discrimination.

2. Nevertheless, we note that these regulations refer to action on behalf of the member that the scheme will need to build processes around to ensure the member has all the information available to them, and that no further guidance has been produced on those steps members will need to take.

3. We welcome the clarity that Part 6 provides on the in-scope years and that members will not need to complete a self-assessment for these years. However, we would like further information on that process and timescales. We would also like clarification in relation to immediate detriment cases whereby police forces, based on the guidance endorsed by HMT have paid a member's benefits and an increased tax charge has been incurred for a now out of scope tax year.

4. The most significant question we have had from members is around the need to pay further pensions tax because of accruing more benefits in the legacy scheme, and how that tax will be calculated and paid. Therefore we welcome chapter 2 of the first tax regulations, which set out

how a PIA should be recalculated and provided to a member and Part 6 of the second tax regulations which set out the new format for paying tax charges that fall in the in-scope years between 2019/2020 and 2022/23.

We now know how the PIA should be recalculated for the remedy years and how the tax charge will be paid for the in-scope years, but the part that is still missing is who will provide support to members to understand whether they have a tax charge to pay based on their revised PIA for the remedy years?

5. The regulations impose a range of administrative requirements on members and that this risks overburdening impacted individuals. Given the inconsistency and degree of complexity in pension scheme regulations across all areas of public service, individuals will need significant support relating to their pension benefits and personal tax position, to make the right decision about their benefits. We understand that HMRC are building a calculator to help members, but we have not seen any developed model and we are three months away from implementation. We have stated many times that scheme managers need to understand both the inputs and outputs of such a model so that they can build processes to support the member in its use.

6. We note that in the guidance to accompany regulation 30, members will be given only 30 days to pay tax once HMRC has made an assessment about their liability. We feel that is too short a timeframe for members who have been patiently waiting for regulations to rectify the discrimination in the scheme.

7. Finally, there are actions in the regulations that scheme administrators need to check for which no process has been developed of which we are aware. Under Regulation 19 scheme administrators will have to make an application to reclaim the overpayment of a scheme sanction charge. We note that under guidance provided for regulation 19, it says that the scheme administrator provides HMRC with information in a form prescribed by HMRC, and that HMRC will raise a credit on the pension scheme's account – and notify the pension scheme that the credit is there. Does HMRC intend to collaborate with local administrators for the Police scheme to ensure that process works across a model of 43 scheme managers and 13 administrators. Forces and administrators will need to evaluate the time required for these new processes when planning the allocation of resources.

If you have any questions, please let me know.

Yours sincerely

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