



HM Treasury

## The Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022

*Made* - - - - *14th December 2022*

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SCHEDULE — NS&I EQUIVALENT SAVINGS RATE 40

The Treasury make the following Directions in exercise of the powers conferred by sections 23(3)(b), 27(1) and (3), 29(6), 59(3)(b), 62(1) and (3), 82(3)(b), 85(1) and (3) of the Public Service Pensions and Judicial Offices Act 2022(a).

In accordance with sections 27(4), 62(4) and 85(4) of that Act, directions 13 to 16, 27 to 30, and 37 to 40 of these Directions are made after consultation with the Government Actuary.

## PART 1

### Introductory

#### **Citation, commencement, extent and application**

**1.**—(1) These Directions may be cited as the Public Service Pensions (Exercise of Powers, Compensation and Information) Directions 2022.

(2) These Directions come into force on 19th December 2022.

(3) These Directions extend to England and Wales, Scotland and Northern Ireland.

(4) These Directions apply in relation to—

- (a) Chapter 1 schemes,
- (b) judicial schemes, and
- (c) local government schemes.

#### **Interpretation**

**2.**—(1) In these Directions—

“annual allowance charge” has the meaning given by section 227(1) of FA 2004(b);

“a Chapter 1 legacy scheme” means a scheme within section 33(3)(a) of PSPJOA 2022;

“a Chapter 1 new scheme” means a scheme within section 33(2)(a) of PSPJOA 2022;

“a Chapter 1 scheme” means a scheme within section 33(2)(a) or (3)(a) of PSPJOA 2022;

“FA 2004” means the Finance Act 2004(c);

“IP 2016” means, in relation to a member of a registered pension scheme, individual protection 2016 by virtue of Part 2 of Schedule 4 to the Finance Act 2016(d);

“a judicial scheme” means a scheme within section 70(2)(a), (4)(a) or (5) of PSPJOA 2022;

“lifetime allowance charge” has the meaning given by section 214(1) of FA 2004;

“lifetime allowance protection” means, in relation to a member of a registered pension scheme—

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(a) 2022 c. 7.

(b) Section 227(1) was amended by the Taxation of Pensions Act 2014 (c. 30), Schedule 1, paragraph 63, and by the Finance (No 2) Act 2015, Schedule 4, paragraph 11.

(c) 2004 c. 12.

(d) 2016 c. 24.

- (a) an enhanced lifetime allowance or enhanced protection by virtue of Part 2 of Schedule 36 to FA 2004,
- (b) fixed protection by virtue of paragraph 14 of Schedule 18 to the Finance Act 2011(a),
- (c) fixed protection 2014 by virtue of Part 1 of Schedule 22 to the Finance Act 2013(b),
- (d) fixed protection 2016 by virtue of Part 1 of Schedule 4 to the Finance Act 2016,
- (e) individual protection 2014 by virtue of Part 1 of Schedule 6 to the Finance Act 2014(c),  
or
- (f) IP 2016;

“a local government new scheme” means a scheme within section 86(2)(a) of PSPJOA 2022;

“the LGPS(E&W)R 2013” means the Local Government Pension Scheme Regulations 2013(d);

“the LGPS(S)R 2018” means the Local Government Pension Scheme (Scotland) Regulations 2018(e);

“a local government scheme” means a scheme within section 86(2)(a) or (3)(a) of PSPJOA 2022;

“PA 1995” means the Pensions Act 1995(f);

“pension savings statement” has the meaning given by regulation 14A(1) of the Registered Pension Schemes (Provision of Information) Regulations 2006(g);

“PSPA 2013” means the Public Service Pensions Act 2013(h)

“PSPJOA 2022” means the Public Service Pensions and Judicial Offices Act 2022;

“registered pension scheme” has the meaning given by section 150(2) of FA 2004;

“the scheme actuary” has the same meaning as in section 12(7D) of PSPA 2013(i).

(2) A term used in Part 2 of these Directions which—

- (a) is defined in, or for the purposes of, a provision in Chapter 1 or Chapter 4 of Part 1 of PSPJOA 2022, and
- (b) is not defined differently in these Directions,

has the meaning given in, or for the purposes of, that provision.

(3) A term used in Part 3 of these Directions which—

- (a) is defined in, or for the purposes of, a provision in Chapter 2 or Chapter 4 of Part 1 of PSPJOA 2022, and
- (b) is not defined differently in these Directions,

has the meaning given in, or for the purposes of, that provision.

(4) A term used in Part 4 of these Directions which—

- (a) is defined in, or for the purposes of, a provision in Chapter 3 or Chapter 4 of Part 1 of PSPJOA 2022, and
- (b) is not defined differently in these Directions,

has the meaning given in, or for the purposes of, that provision.

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(a) 2011 c. 11.  
 (b) 2013 c. 29.  
 (c) 2014 c. 26.  
 (d) S.I. 2013/2356.  
 (e) S.S.I. 2018/141.  
 (f) 1995 c. 26; section 50 was inserted by the Pensions Act 2004 (c. 35), section 273.  
 (g) S.I. 2006/567, inserted by S.I. 2011/1797 and amended by the Taxation of Pensions Act 2014 (c. 30), Schedule 1(6), paragraph 88(2).  
 (h) 2013 c. 25.  
 (i) Section 12(7D) was inserted by PSPJOA 2022, section 92(9).

## PART 2

### Chapter 1 schemes (schemes other than judicial schemes and local government schemes)

#### CHAPTER 1

##### Exercise of powers

#### **Exercise of powers**

3. The powers mentioned in section 27(2) of PSPJOA 2022 may be exercised subject to the provisions of this Part.

#### CHAPTER 2

##### Specific powers

#### **Powers to reduce or waive liabilities**

4.—(1) Scheme regulations made by virtue of section 18 of PSPJOA 2022 must include provision under which, save in relation to tax relief amounts, when exercising any powers to reduce or waive a liability owed by a person to the scheme under section 14, 15, 16 or 17 of PSPJOA 2022, the scheme manager must—

- (a) have regard to the particular circumstances of the member and (if different) the person by whom the liability is owed;
- (b) apply a presumption in favour of recovering the liability unless it is uneconomic to recover it; and
- (c) have regard to whether, instead of or in addition to reducing or waiving the liability, it is appropriate, in the reasonable opinion of the scheme manager, to exercise any powers exercisable by virtue of any scheme regulations made by virtue of section 26(1)(b) of PSPJOA 2022.

(2) Scheme regulations made by virtue of section 18 of PSPJOA 2022 must include provision under which, save in relation to tax relief amounts, when exercising any powers to reduce or waive a liability owed by a scheme to a person under section 15, 16 or 17 of PSPJOA 2022, the scheme manager must—

- (a) have regard to the particular circumstances of the member and (if different) the person to whom the liability is owed; and
- (b) have regard to whether, instead of or in addition to reducing or waiving the liability, it is appropriate, in the reasonable opinion of the scheme manager, to exercise any powers exercisable by virtue of any scheme regulations made by virtue of section 26(1)(b) of PSPJOA 2022.

(3) The particular circumstances that may be relevant under paragraph (1)(a) or (2)(a) include—

- (a) whether the liability has arisen as a result of an election by virtue of section 6 or 10 of PSPJOA 2022;
- (b) whether the liability has arisen as a result of an election that is treated as having been made by virtue of section 8 or 12 of PSPJOA 2022;
- (c) whether the member has remediable service in an employment or office that is mixed service;
- (d) whether the member is deceased;
- (e) whether, in the reasonable opinion of the scheme manager, payment of the liability in full or in part would result in unreasonable hardship; and
- (f) whether, in the reasonable opinion of the scheme manager, there are any other exceptional circumstances which mean the liability should not be paid in full or in part.

(4) Where scheme regulations made by virtue of section 18(2) or (5) of PSPJOA 2022 make provision as mentioned in section 18(3) or (6), scheme regulations by virtue of section 18(2) or (5) of PSPJOA 2022 must include provision in relation to tax relief amounts in accordance with paragraphs (5) to (12).

(5) Tax relief amounts must be calculated for each of the relevant tax years in accordance with paragraph (8).

(6) The tax relief amounts as calculated under paragraph (5) must then be aggregated.

(7) The aggregate sum of the tax relief amounts as calculated under paragraph (6) must then be applied as follows—

- (a) if the aggregate sum is nil, no reduction to any liabilities under section 15, 16 or 17 of PSPJOA 2022 may be made for tax relief amounts,
- (b) if the aggregate sum is negative—
  - (i) in relation to relevant members who are not active members of the scheme, it must be applied to reduce the amount of pension contributions (if any) that would otherwise be payable by the person to the scheme under section 15, 16 or 17,
  - (ii) in relation to relevant members who are active members of the scheme, no reduction may be made to the amount of pension contributions (if any) that would otherwise be payable by the person to the scheme under section 15, 16 or 17,
- (c) if the aggregate sum is positive, it must be applied to reduce the amount of compensation (if any) that would otherwise be payable by the scheme to the person under section 15, 16 or 17.

(8) The tax relief amounts for each of the relevant tax years are to be determined by the scheme manager as—

- (a) the amount of tax relief under section 188 of FA 2004 received in each relevant tax year on the paid contributions amount in relation to the member, less
- (b) the amount of tax relief under section 188 of FA 2004 that would have been due on the adjusted contributions amount in relation to the member had those contributions been paid in each relevant tax year.

(9) When determining the tax relief amounts for each of the relevant tax years under paragraph (8), the scheme manager may adopt an approach which is reasonable in all the circumstances to approximate those amounts, which may include the following—

- (a) the scheme manager may assume that all contributions that were paid, or would have been due (as appropriate), in a relevant pension year, were paid or would have been due in the corresponding relevant tax year,
- (b) the scheme manager may use the member's pensionable earnings in each relevant tax year to approximate, in accordance with the Income Tax Acts, the member's marginal rate at which tax relief was or would have been given on pension contributions made in that year, calculating the amount of tax relief by reference to that marginal rate, or
- (c) the scheme manager may use the member's gross salary figure in each relevant tax year to approximate, in accordance with the Income Tax Acts, the member's marginal rate at which tax relief was or would have been given on pension contributions made in that year, calculating the amount of tax relief by reference to that marginal rate.

(10) The scheme manager must provide the appropriate person with an explanation of how the tax relief amounts for each of the relevant tax years have been determined under paragraph (8).

(11) The appropriate person may appeal against a determination by the scheme manager under paragraph (8) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(12) If an appeal is made under paragraph (11), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,

- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(13) Where scheme regulations are made by virtue of section 18(8) of PSPJOA 2022, such regulations must include provision under which, if no election by virtue of section 10 of PSPJOA 2022 is made, the reduction or waiver of the liability owed by the scheme to a person under section 16 of PSPJOA 2022 ceases to apply at the end of the section 10 election period (such that the amount of the liability that was reduced or waived becomes payable by the scheme to the person again).

(14) In this direction—

- (a) “the adjusted contributions amount” has the same meaning as in section 15(8), 16(7), or 17(8) of PSPJOA 2022 as the context requires;
- (b) “the appropriate person” has the same meaning as in section 15(10), 16(8), or 17(9) of PSPJOA 2022 as the context requires;
- (c) “the corresponding relevant tax year” means the relevant tax year that starts on the 6<sup>th</sup> day of the relevant pension year in question;
- (d) “the paid contributions amount” has the same meaning as in section 15(6), 16(5) or 17(5) of PSPJOA 2022 as the context requires;
- (e) “relevant members” has the same meaning as in section 15(2), 16(2), or 17(2) of PSPJOA 2022 as the context requires;
- (f) “relevant pension year” means—
  - (i) in relation to pensionable service under a Chapter 1 legacy scheme that is not an Agency scheme, the twelve months ending with 31st March for the years from 2015-16 to 2021-22 inclusive;
  - (ii) in relation to pensionable service under a Chapter 1 legacy scheme that is an Agency scheme, the twelve months ending with 31st March for the years from 2016-17 to 2021-22 inclusive;
- (g) “the relevant tax years” has the same meaning as in section 15(9), 16(9) or 17(10) of PSPJOA 2022 as the context requires;
- (h) “tax relief amounts” has the same meaning as in section 18(4) or 18(6) of PSPJOA 2022 as the context requires.

### **Voluntary contributions**

**5.—**(1) Where scheme regulations made by virtue of section 20(1) of PSPJOA 2022 make provision as mentioned in section 20(3), scheme regulations by virtue of section 20(1) of PSPJOA 2022 must include provision under which—

- (a) the scheme manager must obtain advice from the scheme actuary before determining that the varied rights under the Chapter 1 scheme are of an equivalent value to the rights the member would have secured under the Chapter 1 new scheme that is connected with the scheme if the voluntary contributions had been paid to that scheme, and
- (b) the varied rights under the Chapter 1 scheme must be calculated as if the voluntary contributions were paid to the Chapter 1 new scheme in the relevant pension year that the voluntary contributions were paid.

(2) Where scheme regulations made by virtue of section 20(1) of PSPJOA 2022 make provision as mentioned in section 20(4) and 20(5)(a), scheme regulations by virtue of section 20(1) of PSPJOA 2022 must include provision under which the scheme manager must obtain advice from the scheme actuary before determining that the rights under the Chapter 1 scheme that the person receives are of an equivalent value to the extinguished rights.

(3) Where scheme regulations made by virtue of section 20(1) of PSPJOA 2022 make provision as mentioned in section 20(4) and 20(5)(b), scheme regulations by virtue of section 20(1) of PSPJOA 2022 must include provision under which the rights under the Chapter 1 scheme that are

conferred must be calculated as if the voluntary contributions were paid to that scheme in the relevant pension year that the voluntary contributions were paid.

(4) Where scheme regulations made by virtue of section 20(1) of PSPJOA 2022 make provision as mentioned in section 20(4) and 20(5)(c), scheme regulations by virtue of section 20(1) of PSPJOA 2022 must include provision in relation to the value of tax relief (referred to in section 20(5)(c)(ii)) in accordance with paragraphs (5) to (12).

(5) An amount in respect of the value of tax relief must be calculated for each of the relevant tax years in accordance with paragraph (8).

(6) The amounts as calculated under paragraph (5) must then be aggregated.

(7) The aggregate sum of the amounts as calculated under paragraph (6) must then be taken to be the amount in respect of the value of tax relief referred to in section 20(5)(c)(ii) of PSPJOA 2022.

(8) The amounts in respect of the value of tax relief for each of the relevant tax years are to be determined by the scheme manager as the amount of tax relief under section 188 of FA 2004 received in each relevant tax year on the voluntary contributions that were paid in relation to the member.

(9) When determining the amounts in respect of the value of tax relief for each of the relevant tax years under paragraph (8), the scheme manager may adopt an approach which is reasonable in all the circumstances to approximate those amounts, which may include the following—

- (a) the scheme manager may assume that all voluntary contributions that were paid in a relevant pension year were paid in the corresponding relevant tax year,
- (b) the scheme manager may use the member's pensionable earnings in each relevant tax year to approximate, in accordance with the Income Tax Acts, the member's marginal rate at which tax relief was given on pension contributions made in that year, calculating the amount of tax relief by reference to that marginal rate, or
- (c) the scheme manager may use the member's gross salary figure in each relevant tax year to approximate, in accordance with the Income Tax Acts, the member's marginal rate at which tax relief was given on pension contributions made in that year, calculating the amount of tax relief by reference to that marginal rate.

(10) The scheme manager must provide the appropriate person with an explanation of how the tax relief amounts for each of the relevant tax years have been determined under paragraph (8).

(11) The appropriate person may appeal against a determination by the scheme manager under paragraph (8) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(12) If an appeal is made under paragraph (11), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(13) Where scheme regulations made by virtue of section 20(1) of PSPJOA 2022 make provision as mentioned in section 20(4) and 20(5)(c) in relation to earlier payment of benefits, scheme regulations by virtue of section 20(1) of PSPJOA 2022 must include provision in accordance with paragraphs (14) and (15).

(14) The liability owed by the scheme to a person that is mentioned in section 20(5)(c) may, by agreement, be reduced or waived, and either—

- (a) the reduction or waiver of that liability owed by the scheme to a person ceases to apply at the end of the section 10 election period (such that the amount of the liability that was reduced or waived becomes payable by the scheme to the person again) if no election by virtue of section 10 of PSPJOA 2022 is made; or



- (b) where an election by virtue of section 10 of PSPJOA 2022 is made, the appropriate person may also elect either—
  - (i) that the reduction or waiver of that liability owed by the scheme to a person ceases to apply when an election by virtue of section 10 takes effect (such that the amount of the liability that was reduced or waived becomes payable by the scheme to the person again), or
  - (ii) that the person whose rights were extinguished receives rights under a Chapter 1 scheme that are of an equivalent value to the extinguished rights.

(15) Where paragraph (14)(b)(ii) applies, the scheme manager must obtain advice from the scheme actuary before determining that the rights under the Chapter 1 scheme that the person receives are of an equivalent value to the extinguished rights.

(16) In this direction—

- (a) “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives;
- (b) “the corresponding relevant tax year” means the relevant tax year that starts on the 6<sup>th</sup> day of the relevant pension year in question;
- (c) “relevant pension year” means—
  - (i) in relation to pensionable service under a Chapter 1 scheme that is not an Agency scheme, the twelve months ending with 31st March for the years from 2015-16 to 2021-22 inclusive;
  - (ii) in relation to pensionable service under a Chapter 1 scheme that is an Agency scheme, the twelve months ending with 31st March for the years from 2016-17 to 2021-22 inclusive;
- (d) “the relevant tax years” means—
  - (i) in relation to pensionable service under a Chapter 1 scheme that is not an Agency scheme, the tax years from 2015-16 to 2021-22 inclusive;
  - (ii) in relation to pensionable service under a Chapter 1 scheme that is an Agency scheme, the tax years from 2016-17 to 2021-22 inclusive.

## **Transfers**

**6.**—(1) Where scheme regulations made by virtue of section 21 of PSPJOA 2022 make provision for cases as specified in section 21(1)(a), scheme regulations by virtue of section 21 of PSPJOA 2022 must include provision in accordance with paragraphs (2) to (5).

(2) Where a person has transferred any rights in respect of remediable service out of a Chapter 1 scheme, the scheme manager must provide a statement (a “transferred out remediable service statement”) in respect of the person.

(3) A transferred out remediable service statement must include a description of—

- (a) the value of any additional rights in respect of remediable service that the person would have been entitled to immediately prior to the transfer as a result of the operation of section 2(1) of PSPJOA 2022,
- (b) the options (if any) that are available in relation the treatment of those additional rights, and
- (c) where there are any such options, the circumstances in which, and the process by which, an option may be chosen.

(4) Paragraph (2) does not apply if the scheme manager is otherwise required to provide a remediable service statement in respect of the person under any provision made by virtue of section 29(1) of PSPJOA 2022.

(5) Where—

- (a) a person has transferred any rights in respect of remediable service out of a Chapter 1 scheme to a registered pension scheme which is not—

- (i) a Chapter 1 scheme,
  - (ii) a judicial scheme, or
  - (iii) a local government scheme,
- (b) by reason of any provision made by virtue of section 21 of PSPJOA 2022 which makes provision for cases as specified in section 21(1)(a), the scheme manager is required to pay to the person or, if that person is deceased, that person's personal representatives an amount by way of compensation, and
- (c) the amount by way of compensation is not otherwise taxed,

the amount by way of compensation must be reduced by the amount of income tax that would be chargeable on it as if regulation 3(b) of the Registered Pension Schemes (Authorised Payments) Regulations 2009(a) applied to it.

(6) Where scheme regulations made by virtue of section 21 of PSPJOA 2022 make provision for cases as specified in section 21(1)(b) to (e), which includes provision as mentioned in section 21(3), scheme regulations by virtue of section 21 of PSPJOA 2022 must include provision under which—

- (a) the scheme manager must obtain advice from the scheme actuary before determining that the varied rights under the Chapter 1 scheme are of an equivalent value to the rights the member would have secured under the Chapter 1 new scheme that is connected with the scheme if the transfer had been in to that scheme, and
- (b) the varied rights under the Chapter 1 scheme must be calculated as if the transfer was made in to the Chapter 1 new scheme in the relevant pension year that the transfer occurred.

(7) Where scheme regulations made by virtue of section 21 of PSPJOA 2022 make provision for cases as specified in section 21(1)(b) to (e), which includes provision as mentioned in section 21(4) and 21(5)(a), scheme regulations by virtue of section 21 of PSPJOA 2022 must include provision under which the scheme manager must obtain advice from the scheme actuary before determining that the rights under the Chapter 1 scheme that the member receives are of an equivalent value to the extinguished rights.

(8) Where scheme regulations made by virtue of section 21 of PSPJOA 2022 make provision for cases as specified in section 21(1)(b) to (e), which includes provision as mentioned in section 21(4) and 21(5)(b), scheme regulations by virtue of section 21 of PSPJOA 2022 must include provision under which the rights under the Chapter 1 scheme that are conferred must be calculated as if the transfer in was made to that scheme in the relevant pension year that the transfer in was made.

### **Further powers to make provision about special cases**

7.—(1) Scheme regulations for a Chapter 1 scheme must, by virtue of section 22(1) of PSPJOA 2022, include provision in accordance with paragraphs (2) to (6).

(2) Where an individual who has any remediable service is unable to give an effective notice to the scheme administrator under section 237B(3) of FA 2004 in relation to an in-scope tax year because the time limit in section 237BA has passed, that individual may, by notice in writing, request that the scheme administrator of the scheme pays all or part of any annual allowance charge arising in that tax year.

(3) Upon receipt of the notice mentioned in paragraph (2), the scheme administrator must pay all or part of the annual allowance charge arising in that tax year, in accordance with the notice.

(4) Together with any pension savings statement, the scheme administrator must provide information to the individual in relation to the process for making a request under paragraph (2) and the consequences of making such a request.

(5) Where, in relation to an individual's remediable service—

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(a) S.I. 2009/1171.

- (a) the individual has not given a notice to the scheme administrator under section 237B(3) of FA 2004 in relation to an in-scope tax year, and
- (b) nevertheless, the scheme administrator has paid any annual allowance charge arising in that tax year,

the scheme administrator must pay any additional annual allowance tax charge arising in that tax year.

(6) Together with any pension savings statement, the scheme administrator must provide information to the individual about the payment under paragraph (5) and the consequences of that payment.

(7) In this direction, a tax year is “in-scope” in relation to an individual if any necessary adjustment to the amount of income tax paid by that individual in that tax year is capable of being enforced by HMRC under the Income Tax Acts.

## CHAPTER 3

### Compensation

#### **Power to pay compensation**

**8.**—(1) When exercising the power to pay amounts by way of compensation by virtue of section 23(1) of PSPJOA 2022, the scheme manager must—

- (a) have regard to the purpose of the compensation,
- (b) comply with the principle of regularity,
- (c) comply with the principle of propriety,
- (d) comply with the principle of value for money,
- (e) have regard to the particular circumstances of the member and (if different) the person to whom the compensation is to be paid,
- (f) have regard to whether, in the reasonable opinion of the scheme manager, sufficient evidence has been provided or is otherwise available to the scheme manager to establish—
  - (i) whether, and to what extent, any of the three conditions contained in section 23(4), (5) or (6) of PSPJOA 2022 are met,
  - (ii) the existence, nature and extent of the loss incurred by a member, or by a member’s personal representatives,
  - (iii) whether, and to what extent, the loss incurred by a member, or by a member’s personal representatives, meets one of the descriptions in direction 9, and
  - (iv) the quantum of the compensation (as appropriate to the nature and extent of any loss established),
- (g) have regard to whether, if a claim for compensation were brought in litigation, it is more likely than not that compensation would be awarded and, if so, have regard to the likely quantum of the compensation that would be awarded,
- (h) in determining the quantum of the compensation, have regard to whether, and to what extent, the member (or, if different, the person to whom the amounts by way of compensation are to be paid) has, or should have, taken reasonable steps to mitigate the loss,
- (i) subject to sub-paragraph (h), ensure any payment of amounts by way of compensation is reasonable and proportionate to the loss incurred by the member, or by the member’s personal representatives, and
- (j) in relation to a loss which falls within the condition in section 23(4) of PSPJOA 2022, not make any payment of amounts by way of compensation which would allow the member (or, if different, the person to whom the amounts by way of compensation are to be paid) to

gain an unreasonable financial advantage compared to what would have happened if there had not been a relevant breach of a non-discrimination rule.

(2) For the purposes of paragraph (1)(a), the “purpose of the compensation” means—

- (a) in relation to a loss which falls within the condition in section 23(4) of PSPJOA 2022, the purpose to pay only such amounts by way of compensation (if any) as are necessary (and no more than are necessary) to put the member (or, if different, the person to whom the amounts by way compensation are to be paid) into the position they would have been in had there not been a relevant breach of a non-discrimination rule, or
- (b) in relation to a loss which falls within one of conditions in section 23(5) or (6) of PSPJOA 2022, the purpose to pay only such amounts by way of compensation (if any) as are necessary (and no more than are necessary) to compensate the member (or, if different, the person to whom the amounts by way compensation are to be paid) reasonably in respect of the loss.

(3) For the purposes of paragraph (1)(b), when considering what the principle of regularity requires, the scheme manager must have regard to any applicable legislation and wider legal principles.

(4) For the purposes of paragraph (1)(c), when considering what the principle of propriety requires, the scheme manager must have regard to maintaining high standards of public conduct, ensuring robust governance, and ensuring compliance with any applicable financial controls or reporting obligations.

(5) For the purposes of paragraph (1)(d), when considering what the principle of value for money requires, the scheme manager must have regard to whether, in comparison to any reasonable alternative possibilities or doing nothing, any payment of amounts by way of compensation delivers value for the Exchequer as a whole.

(6) The scheme manager may only pay amounts by way of compensation by virtue of section 23(1) of PSPJOA 2022 in respect of a Part 4 tax loss to the extent that the compensation relates to—

- (a) a tax charge which the member originally paid directly to HMRC in money, or
- (b) tax relief.

### **Compensatable losses: compensation**

**9.—**(1) For the purposes of section 23(3)(b) of PSPJOA 2022, a loss incurred by a member, or by a member’s personal representatives, is compensatable if and to the extent that it falls within one of the descriptions in paragraph (2) to (4).

(2) A loss falls within this paragraph where the condition contained in section 23(4) of PSPJOA 2022 is met and the loss is—

- (a) a direct financial loss, or
- (b) a specified Part 4 tax loss.

(3) A loss falls within this paragraph where the condition contained in section 23(5) of PSPJOA 2022 is met and the loss is—

- (a) a direct financial loss which is directly related to the member’s remediable service in an employment or office which is mixed service, or
- (b) a specified Part 4 tax loss.

(4) A loss falls within this paragraph where the condition contained in section 23(6) of PSPJOA 2022 is met, and where the loss is a Part 4 tax loss which falls within the description in paragraph (5).

(5) Where the relevant member has paid more annual allowance charge in the relevant tax years than they would have done had no election by virtue of section 6 of PSPJOA 2022 been made, the amount of any additional annual allowance charge the relevant member has paid in the relevant tax years.

(6) For the purposes of paragraph (2)(b) or (3)(b), a Part 4 tax loss is a “specified Part 4 tax loss” if and to the extent that it falls within one of the following descriptions—

- (a) where, by reason of the operation of section 2(1) of PSPJOA 2022, a member has overpaid an annual allowance charge in relation to an out-of-scope tax year, the amount of the overpayment;
- (b) where, by reason of the operation of section 2(1) of PSPJOA 2022, a member has overpaid a lifetime allowance charge in relation to an out-of-scope tax year, the amount of the overpayment;
- (c) where, by reason of the operation of section 2(1) of PSPJOA 2022, a member has overpaid an annual allowance charge or a lifetime allowance charge in relation to a registered pension scheme which is not—

- (i) a Chapter 1 scheme,
- (ii) a judicial scheme, or
- (iii) a local government scheme,

and the member is unable to recover the amount of the overpaid annual allowance charge or lifetime allowance charge from that registered pension scheme, the amount of the overpayment that is unrecoverable from that registered pension scheme;

- (d) where, notwithstanding the operation of section 2(1) of PSPJOA 2022—
  - (i) any lifetime allowance protection to which the member was entitled immediately before the start of the relevant tax years cannot be restored because the member can no longer meet the statutory criteria,
  - (ii) the member is unable to mitigate their loss in full by applying for IP 2016, and
  - (iii) the member is no longer accruing pension benefits,

the difference between the amount of any additional lifetime allowance charge the member has paid as compared to what the amount of the lifetime allowance charge would have been if the lifetime allowance protection was restored, less the amount of any mitigation that is possible by applying for IP 2016, and less any appropriate reduction;

- (e) where direction 4(7)(b)(ii) applies in relation to a member, the amount of the negative aggregate sum, less the amount of any tax relief under section 188 of FA 2004 the appropriate person receives on the amount of pension contributions (if any) that the appropriate person pays to the scheme under section 15, 16 or 17 of PSPJOA 2022;
- (f) where, by reason of the exercise of any powers exercisable by virtue of scheme regulations made by virtue of section 20(1) of PSPJOA 2022—
  - (i) the provision mentioned in section 20(4) of PSPJOA 2022 applies in relation to a member,
  - (ii) the provision mentioned in section 20(5)(a) or (b) of PSPJOA 2022 applies in relation to that member, and
  - (iii) that member has overpaid an annual allowance charge in relation to a relevant tax year when compared to the amount of annual allowance charge the member would have paid in that relevant tax year if the voluntary contributions had been paid originally to the Chapter 1 scheme in which the member now has rights,

the amount of the overpayment;

- (g) where, by reason of the exercise of any powers exercisable by virtue of scheme regulations made by virtue of section 20(1) of PSPJOA 2022—
  - (i) the provision mentioned in section 20(4) of PSPJOA 2022 applies in relation to a member,
  - (ii) the provision mentioned in section 20(5)(a) or (b) of PSPJOA 2022 applies in relation to that member, and
  - (iii) that member has overpaid an annual allowance charge in relation to a subsequent tax year when compared to the amount of annual allowance charge the member would

have paid in that subsequent tax year if the voluntary contributions had been paid originally to the Chapter 1 scheme in which the member now has rights,

the amount of the overpayment, less the aggregate amount of annual allowance charge the member would have paid in the relevant tax years if the voluntary contributions had been paid originally to the Chapter 1 scheme in which the member now has rights;

- (h) where, by reason of the exercise of any powers exercisable by virtue of scheme regulations made by virtue of section 20(1) of PSPJOA 2022—
  - (i) the provision mentioned in section 20(4) of PSPJOA 2022 applies in relation to a member,
  - (ii) the provision mentioned in section 20(5)(c) of PSPJOA 2022 applies in relation to that member, and
  - (iii) that member has overpaid an annual allowance charge in relation to a relevant tax year when compared to the amount of annual allowance charge the member would have paid in relation to that relevant tax year if the voluntary contributions had not been paid,

the amount of the overpayment; or

- (i) where, by reason of the exercise of any powers exercisable by virtue of scheme regulations made by virtue of section 20(1) of PSPJOA 2022—
  - (i) the provision mentioned in section 20(4) of PSPJOA 2022 applies in relation to a member,
  - (ii) the provision mentioned in section 20(5)(c) of PSPJOA 2022 applies in relation to that member, and
  - (iii) by reason of remedial voluntary contributions arrangements entered into by that member by virtue of any powers exercisable by virtue of scheme regulations made by virtue of section 25(1) of PSPJOA 2022, that member has overpaid an annual allowance charge in relation to a subsequent tax year in respect of those remedial voluntary contributions arrangements when compared to the amount of annual allowance charge the member would have paid in that subsequent tax year if the voluntary contributions had been paid originally to the Chapter 1 scheme in which the member now has rights,

the amount of the overpayment, less the aggregate amount of annual allowance charge the member would have paid in the relevant tax years if the voluntary contributions paid under the remedial voluntary contributions arrangements had been paid originally to the Chapter 1 scheme in which the member now has rights.

(7) In paragraph (6)(d), the “appropriate reduction” is the amount (if any) of any tax relief on pension contributions that the member has received in the relevant tax years which the member would not have received had any lifetime allowance protection been maintained.

(8) In this direction, a tax year is “out-of-scope” in relation to an individual where—

- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
- (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.

(9) In this direction—

- (a) “the appropriate person” has the same meaning as in section 15(10), 16(8), or 17(9) of PSPJOA 2022 as the context requires;
- (b) “the relevant tax years” means—
  - (i) in relation to pensionable service under a Chapter 1 scheme that is not an Agency scheme, the tax years from 2015-16 to 2021-22 inclusive;
  - (ii) in relation to pensionable service under a Chapter 1 scheme that is an Agency scheme, the tax years from 2016-17 to 2021-22 inclusive;

- (c) “the start of the relevant tax years” means—
  - (i) in relation to pensionable service under a Chapter 1 scheme that is not an Agency scheme, 6th April 2015;
  - (ii) in relation to pensionable service under a Chapter 1 scheme that is an Agency scheme, 6th April 2016;
- (d) “a subsequent tax year” means a tax year from 2022-23 onwards.

### **Indirect compensation**

**10.**—(1) Scheme regulations for a Chapter 1 scheme must, by virtue of section 24(1) of PSPJOA 2022, include provision in accordance with paragraphs (2) to (4).

(2) When exercising any powers exercisable by virtue of scheme regulations made by virtue of section 24(1) of PSPJOA 2022 to pay additional benefits under the scheme to the member, the scheme manager must comply with the requirements contained in direction 8(1) in relation to the exercise of those powers as those requirements apply to the power to pay amounts by way of compensation by virtue of section 23(1) of PSPJOA 2022 (and the reference in direction 8(1)(f)(iii) to direction 9 is to be read as a reference to direction 11, accordingly).

(3) The scheme manager must obtain advice from the scheme actuary before determining what additional benefits to pay to a member.

(4) When determining what additional benefits to pay to a member, the scheme manager must, in accordance with the advice obtained from the scheme actuary, apply the actuarial factors that were in force when the pension debit was calculated originally.

### **Compensatable losses: indirect compensation**

**11.**—(1) For the purposes of section 23(3)(b) when read with section 24 of PSPJOA 2022, a Part 4 tax loss incurred by a member is compensatable if and to the extent that it falls within one of the descriptions in paragraph (2) or (3).

(2) A loss falls within this paragraph where the condition contained in section 23(4) or 23(5) of PSPJOA 2022 is met and the loss is a specified Part 4 tax loss.

(3) A loss falls within this paragraph where the condition contained in section 23(6) of PSPJOA 2022 is met and the Part 4 tax loss falls within the description in paragraph (4).

(4) Where a scheme administrator has (whether pursuant to a notice given by the member to the scheme administrator under section 237B(3) of FA 2004, or not) overpaid more annual allowance charge in respect of a relevant member in the relevant tax years than it would have done had no election by virtue of section 6 of PSPJOA 2022 been made, the amount of any additional annual allowance charge the scheme administrator has paid in the relevant tax years.

(5) For the purposes of paragraph (2), a Part 4 tax loss is a “specified Part 4 tax loss” if and to the extent that it falls within one of the following descriptions—

- (a) where, by reason of the operation of section 2(1) of PSPJOA 2022 for the purposes mentioned in section 2(3)(b), a scheme administrator has overpaid an annual allowance charge in respect of a member (whether pursuant to a notice given by the member to the scheme administrator under section 237B(3) of FA 2004, or not) in relation to an out-of-scope tax year, the amount of the overpayment;
- (b) where, by reason of the operation of section 2(1) of PSPJOA 2022 for the purposes mentioned in section 2(3)(b), a scheme administrator has overpaid a lifetime allowance charge in respect of a member in relation to an out-of-scope tax year, the amount of the overpayment; or
- (c) where, by reason of the exercise of any powers exercisable by virtue of scheme regulations made by virtue of section 20(1) of PSPJOA 2022—
  - (i) the provision mentioned in section 20(4) of PSPJOA 2022 applies in relation to a member,

- (ii) the provision mentioned in section 20(5)(a) or (b) of PSPJOA 2022 applies in relation to that member, and
  - (iii) the scheme administrator has overpaid an annual allowance charge in respect of that member in relation to a relevant tax year when compared to the amount of annual allowance charge the scheme administrator would have paid in that relevant tax year if the voluntary contributions had been paid originally to the Chapter 1 scheme in which the member now has rights,
    - the amount of the overpayment.
- (6) In this direction, a tax year is “out-of-scope” in relation to an individual where—
- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
  - (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.
- (7) In this direction, “the relevant tax years” has the same meaning as in section 16(9) of PSPJOA 2022.

### **Remedial arrangements to pay voluntary contributions to legacy schemes**

**12.**—(1) Where scheme regulations made by virtue of section 25(1) of PSPJOA 2022 make provision as mentioned in section 25(4), scheme regulations by virtue of section 25(1) of PSPJOA 2022 must include provision in relation to tax relief amounts in accordance with paragraphs (2) to (10).

(2) Tax relief amounts must be calculated for each of the relevant tax years to which the remedial voluntary contributions arrangements relate in accordance with paragraph (6).

(3) For the purposes of this direction, remediable voluntary contributions arrangements relate to the relevant tax years in which the scheme manager is satisfied that the same or similar arrangements would have been entered into in those relevant tax years, in accordance with section 25(3) of PSPJOA 2022.

(4) The tax relief amounts as calculated under paragraph (2) must then be aggregated.

(5) The aggregate sum of the tax relief amounts as calculated under paragraph (4) must then be applied as follows—

- (a) in relation to relevant members who are not active members of the scheme, it must be applied to reduce the total amount of voluntary contributions payable by the person to the scheme for the relevant tax years to which the remedial voluntary contributions arrangements relate,
- (b) in relation to relevant members who are active members of the scheme, no reduction may be made to the amount of voluntary contributions payable by the person to the scheme for the relevant tax years to which the remedial voluntary contributions arrangements relate.

(6) The tax relief amounts for each of the relevant tax years to which the remedial voluntary contributions arrangements relate are to be determined by the scheme manager as the amount of tax relief under section 188 of FA 2004 that would have been due on the voluntary contributions had those voluntary contributions been paid in the relevant tax year to which they relate.

(7) When determining the tax relief amounts for each of the relevant tax years under paragraph (6), the scheme manager may adopt an approach which is reasonable in all the circumstances to approximate those amounts, which may include the following—

- (a) the scheme manager may assume that all contributions that were paid, or would have been due (as appropriate), in a relevant pension year, were paid or would have been due in the corresponding relevant tax year,
- (b) the scheme manager may use the member’s pensionable earnings in each relevant tax year to approximate, in accordance with the Income Tax Acts, the member’s marginal



rate at which tax relief was or would have been given on pension contributions made in that year, calculating the amount of tax relief by reference to that marginal rate, or

- (c) the scheme manager may use the member's gross salary figure in each relevant tax year to approximate, in accordance with the Income Tax Acts, the member's marginal rate at which tax relief was or would have been given on pension contributions made in that year, calculating the amount of tax relief by reference to that marginal rate.

(8) The scheme manager must provide the appropriate person with an explanation of how the tax relief amounts for each of the relevant tax years have been determined under paragraph (6).

(9) The appropriate person may appeal against a determination by the scheme manager under paragraph (6) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(10) If an appeal is made under paragraph (9), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(11) In this direction—

- (a) “the appropriate person” means the member or, if the member is deceased, the member's personal representatives;
- (b) “the corresponding relevant tax year” means the relevant tax year that starts on the 6<sup>th</sup> day of the relevant pension year in question;
- (c) “relevant members” has the same meaning as in section 25(2) of PSPJOA 2022;
- (d) “relevant pension year” means—
  - (i) in relation to pensionable service under a Chapter 1 legacy scheme that is not an Agency scheme, the twelve months ending with 31st March for the years from 2015-16 to 2021-22 inclusive;
  - (ii) in relation to pensionable service under a Chapter 1 legacy scheme that is an Agency scheme, the twelve months ending with 31st March for the years from 2016-17 to 2021-22 inclusive;
- (e) “the relevant tax years” has the same meaning as in section 16(9) of PSPJOA 2022;
- (f) “tax relief amounts” has the same meaning as in section 25(5) of PSPJOA 2022.

## CHAPTER 4

### Interest and process

#### **Interest: general**

**13.** Scheme regulations for a Chapter 1 scheme must, by virtue of section 26(1)(a) of PSPJOA 2022, include provision under which interest must be calculated and paid on relevant amounts in accordance with directions 14 to 16.

#### **Interest: rates**

**14.—(1)** Where the scheme manager pays an amount by way of compensation under section 23(1) of PSPJOA 2022 in respect of a compensatable loss which is a Part 4 tax loss, interest must

be calculated on that amount in accordance with the provisions of the Taxes (Interest Rate) Regulations 1989(a) as if that amount were overpaid tax.

(2) Save where paragraph (1) applies, interest must be calculated as follows.

(3) Where a person is required to pay an amount to the scheme—

- (a) interest must be calculated as compound interest which accrues from day to day, and
- (b) the rate of interest to be applied must be the NS&I Equivalent Savings Rate for the time being.

(4) Where a scheme manager is required to pay an amount to a person in the circumstances described in direction 15(3)(b), (6)(b), (7)(b), (11), (15)(b) or (17)(b)—

- (a) interest must be calculated as compound interest which accrues from day to day, and
- (b) the rate of interest to be applied must be the NS&I Equivalent Savings Rate for the time being.

(5) Save where paragraph (4) applies, where a scheme manager is required to pay an amount to a person—

- (a) interest must be calculated as simple interest which accrues from day to day, and
- (b) subject to paragraph (6), the rate of interest to be applied must be the rate fixed, for the time being, by section 17(1) of the Judgments Act 1838(b) and, in Scotland, the rate fixed, for the time being, by section 9 of the Sheriff Courts (Scotland) Extracts Act 1892(c).

(6) Where the rate of interest in paragraph (5)(b) has varied during a period for which interest is to be calculated, the scheme manager may, if it considers it appropriate in the interests of simplicity, apply such median or average of those rates as seems to it appropriate.

(7) In this direction, “the NS&I Equivalent Savings Rate” means—

- (a) in relation to times prior to the date these Directions are made, the NS&I Equivalent Savings Rate as specified in the Schedule to these Directions,
- (b) in relation to times from the date these Directions are made, such interest rate for the time being as determined and published by the Treasury periodically.

### **Interest: periods**

**15.**—(1) Where a beneficiary is required to pay an amount to the scheme under section 14(3) of PSPJOA 2022, interest must be calculated in respect of that amount from the dates that any amounts of overpaid benefits were paid to the date of payment.

(2) For the purposes of paragraph (1), the dates that any amounts of overpaid benefits were paid must be determined by the scheme manager using one of the following methods—

- (a) any amounts of overpaid benefits that were paid during each relevant pension year are treated as having been paid from the day which falls half-way through that pension year (or, if the overpaid benefits relate to a period less than a whole pension year, from the day which falls half-way through that period), or
- (b) any amounts of overpaid benefits are treated as having been paid from the day when each overpayment was made.

(3) Where the scheme manager is required to pay an amount to a beneficiary under section 14(4) of PSPJOA 2022, interest must be calculated on that amount—

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(a) S.I. 1989/1297, relevant amending instruments are S.I. 1994/1307, S.I. 2009/199, S.I. 2020/194 and S.I. 2021/249. HMRC publishes guidance detailing the applicable rates which is available here: <https://www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-early-payments/rates-and-allowances-hmrc-interest-rates>.

(b) 1838 c. 110. Section 17(1) was amended by S.I. 1998/2940; there are other amending instruments but none is relevant.

(c) 1892 c. 17. Section 9 was substituted by S.I. 1975/948 and amended by S.I. 1993/769.

- (a) from the mid-point date to the date 28 days after a remediable service statement is first issued (or to the date of payment, if earlier), and
- (b) if payment has not been made by the end of the period mentioned in sub-paragraph (a), from the end of that period to the date of payment.

(4) In paragraph (3)(a), “the mid-point date” means the day which falls half-way through the period beginning on the date when pension benefits were first underpaid, and ending on the date 28 days after a remediable service statement is first issued.

(5) Where a beneficiary is required to pay an amount to the scheme under section 14(5) of PSPJOA 2022, interest must be calculated on that amount from the date that the lump sum benefits were paid to the date of payment.

(6) Where the scheme manager is required to pay an amount to a beneficiary under section 14(6) of PSPJOA 2022, interest must be calculated on that amount—

- (a) from the date that the lump sum benefits were paid to the date 28 days after a remediable service statement is first issued (or to the date of payment, if earlier), and
- (b) if payment has not been made by the end of the period mentioned in sub-paragraph (a), from the end of that period to the date of payment.

(7) Where the scheme manager is required to pay an amount of compensation to the appropriate person under section 15(3) or 16(3) of PSPJOA 2022, interest must be calculated on that amount (after any reduction for tax relief amounts)—

- (a) from the mid-point date to the date 28 days after a remediable service statement is first issued (or to the date of payment, if earlier), and
- (b) if payment has not been made by the end of the period mentioned in sub-paragraph (a), from the end of that period to the date of payment.

(8) In paragraph (7)(a), “the mid-point date” means the day which falls half-way through the period beginning on the date when pension contributions were first overpaid, and ending on the date 28 days after a remediable service statement is first issued.

(9) Where the appropriate person is required to pay pension contributions to the scheme under section 15(4) or 16(4) of PSPJOA 2022, interest must be calculated in respect of that amount (after any reduction for tax relief amounts) from the dates that any amounts of underpaid contributions would have fallen due to the date of payment.

(10) For the purposes of paragraph (9), the dates that any amounts of underpaid contributions would have fallen due must be determined by the scheme manager using one of the following methods—

- (a) any amounts of underpaid contributions (after any reduction for tax relief amounts) that would have fallen due during each relevant pension year are treated as falling due from the day which falls half-way through that pension year (or, if the underpaid contributions relate to a period less than a whole pension year, from the day which falls half-way through that period), or
- (b) any amounts of underpaid contributions (after any reduction for tax relief amounts) are treated as falling due from the day when each underpayment would have fallen due.

(11) Where the scheme manager is required to pay an amount of compensation to the appropriate person under section 17(3) of PSPJOA 2022, interest must be calculated on that amount (after any reduction for tax relief amounts) from the dates that any amounts of overpaid contributions were paid to the date of payment.

(12) For the purposes of paragraph (11), the dates that any amounts of overpaid contributions were paid must be determined by the scheme manager using one of the following methods—

- (a) any amounts of overpaid contributions (after any reduction for tax relief amounts) that were paid during each relevant pension year are treated as having been paid from the day which falls half-way through that pension year (or, if the overpaid contributions relate to a period less than a whole pension year, from the day which falls half-way through that period), or

- (b) any amounts of overpaid contributions (after any reduction for tax relief amounts) are treated as having been paid from the day when each overpayment was paid.

(13) Where the appropriate person is required to pay pension contributions to the scheme under section 17(4) of PSPJOA 2022, interest must be calculated in respect of that amount (after any reduction for tax relief amounts) from the dates that any amounts of underpaid contributions would have fallen due to the date of payment.

(14) For the purposes of paragraph (13), the dates that any amounts of underpaid contributions would have fallen due must be determined by the scheme manager using one of the following methods—

- (a) any amounts of underpaid contributions (after any reduction for tax relief amounts) that would have fallen due during each relevant pension year are treated as falling due from the day which falls half-way through that pension year (or, if the underpaid contributions relate to a period less than a whole pension year, from the day which falls half-way through that period), or
- (b) any amounts of underpaid contributions (after any reduction for tax relief amounts) are treated as falling due from the day when each underpayment would have fallen due.

(15) Where a liability owed by the scheme to a person under section 16(3) of PSPJOA 2022 has, by agreement, been reduced or waived by virtue of scheme regulations made by virtue of section 18(8) of PSPJOA 2022, and that reduction or waiver has ceased to apply under the provision required by direction 4(13) (such that the amount of the liability that was reduced or waived becomes payable by the scheme to the person again), interest must be calculated on that amount (after any reduction for tax relief amounts)—

- (a) from the mid-point date to the date 28 days after a remediable service statement is first issued (or to the date of payment, if earlier), and
- (b) if payment has not been made by the end of the period mentioned in sub-paragraph (a), from the end of that period to the date of payment.

(16) In paragraph (15)(a), “the mid-point date” means the day which falls half-way through the period beginning on the date when pension contributions were first overpaid, and ending on the date 28 days after a remediable service statement is first issued.

(17) Where the scheme manager is required to pay an amount by way of compensation to the member or the member’s personal representatives under scheme regulations made by virtue of section 20(1) of PSPJOA 2022, which make provision as mentioned in section 20(5)(c) of PSPJOA 2022, interest must be calculated on that amount (after any reduction for tax relief amounts)—

- (a) from the mid-point date to the date 28 days after a remediable service statement is first issued (or to the date of payment, if earlier), and
- (b) if payment has not been made by the end of the period mentioned in sub-paragraph (a), from the end of that period to the date of payment.

(18) In paragraph (17)(a), “the mid-point date” means the day which falls half-way through the period beginning on the date when the voluntary contributions were first overpaid, and ending on the date 28 days after a remediable service statement is first issued.

(19) Where the scheme manager pays amounts by way of compensation to members or personal representatives under section 23(1) of PSPJOA 2022, in respect of a compensatable loss which is a direct financial loss, interest must be calculated on that amount from the date that direct financial loss arose to the date of payment.

(20) In this direction, where the number of days in a period is even, a reference to the day which falls half-way through that period is to be read as a reference to the first day of the second half of the period.

(21) In this direction—

- (a) “any reduction for tax relief amounts” means, as the context requires, any reduction for tax relief amounts under scheme regulations made by virtue of—
  - (i) section 18(2) of PSPJOA 2022 which make provision as mentioned in section 18(3),

- (ii) section 18(5) of PSPJOA 2022 which make provision as mentioned in section 18(6), or
- (iii) section 20(1) of PSPJOA 2022 which make provision as mentioned in section 20(4) and (5)(c)(ii);
- (b) “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives;
- (c) “relevant pension year” means—
  - (i) in relation to pensionable service under a Chapter 1 scheme that is not an Agency scheme, the twelve months ending with 31st March for the years from 2015-16 to 2021-22 inclusive,
  - (ii) in relation to pensionable service under a Chapter 1 scheme that is an Agency scheme, the twelve months ending with 31st March for the years from 2016-17 to 2021-22 inclusive.

**Interest: other**

16.—(1) In relation to any other relevant amounts, the scheme manager may determine whether interest is paid and, if so, what rate of interest applies and how interest is calculated.

(2) Where the scheme manager makes a determination under paragraph (1), the scheme manager must provide the appropriate person with an explanation of what rate of interest applies and how interest has been calculated on any relevant amounts.

(3) The appropriate person may appeal against a determination by the scheme manager under paragraph (1) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount of interest, supported by any evidence the appropriate person considers relevant.

(4) If an appeal is made under paragraph (3), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(5) In this direction, “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives.

**Process: general**

17. Scheme regulations for a Chapter 1 scheme must, by virtue of section 26(1)(b) of PSPJOA 2022, include provision in accordance with directions 18 and 19.

**Process: application for compensation or indirect compensation**

18.—(1) Relevant amounts owed by the scheme to a person by virtue of section 23(1) or 24(1) of PSPJOA 2022 may be paid only on the making of an application to the scheme manager by the appropriate person in such form and manner as determined by the scheme manager, subject to paragraph (2).

(2) Where the relevant amounts owed by the scheme to a person by virtue of section 23(1) or 24(1) of PSPJOA 2022 are in respect of a specified Part 4 tax loss mentioned in direction 9(6)(a) or (b) or 11(4)(a) or (b), the application mentioned in paragraph (1) must include the following—

- (a) a calculation obtained by the appropriate person from HMRC (by virtue of HMRC’s compensation function by virtue of section 104 of PSPJOA 2022) of any compensation or any indirect compensation owed by the scheme to the person in relation to each out-of-scope tax year,

- (b) a signed declaration by the appropriate person that the information provided to HMRC in order to obtain the calculation mentioned in paragraph (2)(a), and the calculation itself, is correct and complete to the best of their knowledge and belief, and
- (c) a warning that, if false information is given, the appropriate person signing the declaration mentioned in paragraph (2)(b) may face civil action or prosecution, or both.

(3) The scheme manager must determine the relevant amounts (if any) owed by the scheme to a person by virtue of section 23(1) or 24(1) of PSPJOA 2022 following receipt of the application mentioned in paragraph (1).

(4) The scheme manager must provide the appropriate person with an explanation of how the relevant amounts (if any) have been determined under paragraph (3).

(5) The appropriate person may appeal against a determination by the scheme manager under paragraph (3) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(6) If an appeal is made under paragraph (5), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(7) In this direction, a tax year is “out-of-scope” in relation to an individual where—

- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
- (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.

(8) In this direction, “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives.

### **Process: netting off**

**19.**—(1) Where relevant amounts (and any interest on them) fall to be paid at the same or approximately the same times, the scheme manager may determine that those relevant amounts must be aggregated and that the difference must be paid by a person to the scheme, or by the scheme to a person (as the case may be), as follows.

(2) Each relevant amount that is payable by a person to the scheme, together with any interest on that relevant amount, must be aggregated.

(3) Each relevant amount that is payable by a scheme to a person, together with any interest on that relevant amount, must be aggregated.

(4) Where the aggregate sum in paragraph (2) exceeds the aggregate sum in paragraph (3), the person must pay the difference to the scheme.

(5) Where the aggregate sum in paragraph (3) exceeds the aggregate sum in paragraph (2), the scheme must pay the difference to the person.

(6) The scheme manager must provide the appropriate person with an explanation of any determination under paragraph (1).

(7) The appropriate person may appeal against a determination by the scheme manager under paragraph (1) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative approach, supported by any evidence the appropriate person considers relevant.

(8) If an appeal is made under paragraph (7), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(9) In this direction, “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives.

## CHAPTER 5

### Information

#### **Remediable service statements**

**20.**—(1) In addition to the matters set out in section 29(5) of PSPJOA 2022 (remediable service statements), a remediable service statement must also include, so far as applicable to the member—

- (a) a description of any corrections to pension benefits and lump sum benefits required by section 14 of PSPJOA 2022, including—
  - (i) any interest payable in respect of those corrections, by virtue of provision made under section 26(1)(a) of PSPJOA 2022, and
  - (ii) the process by which those corrections will be made, including any relevant provision made under section 26(1)(b) of PSPJOA 2022;
- (b) a description of any corrections to contributions that are, or may be, required by section 15, 16 or 17 of PSPJOA 2022, including—
  - (i) any interest that is, or may be, payable in respect of those corrections, by virtue of provision made under section 26(1)(a) of PSPJOA 2022, and
  - (ii) the process by which those corrections will, or may, be made, including any relevant provision made under section 26(1)(b) of PSPJOA 2022;
- (c) a description of the effect of any provision made by virtue of section 20(1) of PSPJOA 2022 in relation to a member who has paid voluntary contributions during any period of relevant service, including—
  - (i) the benefits (if any) that are currently available under the scheme in respect of those voluntary contributions,
  - (ii) the amount by way of compensation (if any) that is due to be paid in respect of those voluntary contributions,
  - (iii) the benefits (if any) that would be available under the scheme in respect of those voluntary contributions if any election under section 5, 6 or 10 of PSPJOA 2022 that could be made in relation to the service was made,
  - (iv) the amount by way of compensation (if any) that would be payable in respect of those voluntary contributions if any election under section 5, 6 or 10 of PSPJOA 2022 that could be made in relation to the service was made,
  - (v) the options (if any) that are available in relation to the treatment of those voluntary contributions, and
  - (vi) where there are any such options, the circumstances in which, and the process by which, an option may be chosen;
- (d) where the member has transferred any rights in respect of remediable service out of the scheme, a description of—
  - (i) the value of any additional rights in respect of remediable service that the member would have been entitled to immediately prior to the transfer as a result of the operation of section 2(1) of PSPJOA 2022,
  - (ii) the options (if any) that are available in relation the treatment of those additional rights, and

- (iii) where there are any such options, the circumstances in which, and the process by which, an option may be chosen;
  - (e) a description of the effect of any provision made by virtue of section 21(1)(b) to (e) of PSPJOA 2022 in relation to a member who has transferred in to the scheme rights in respect of remediable service in an employment or office or rights in respect of service in an employment or office, including—
    - (i) the benefits (if any) that are currently available under the scheme in respect of those rights,
    - (ii) the amount by way of compensation (if any) that is due to be paid in respect of those rights,
    - (iii) the benefits (if any) that would be available under the scheme in respect of those in rights if any election under section 5, 6 or 10 of PSPJOA 2022 that could be made in relation to the service was made,
    - (iv) the amount by way of compensation (if any) that would be payable in respect of those rights if any election under section 5, 6 or 10 of PSPJOA 2022 that could be made in relation to the service was made,
    - (v) the options (if any) that are available in relation to the treatment of those rights, and
    - (vi) where there are any such options, the circumstances in which, and the process by which, an option may be chosen;
  - (f) an explanation that there may be changes in relation to tax liabilities in relation to the member as a result of the operation of section 2(1) of PSPJOA 2022 and as a result of any election under section 5, 6 or 10 of PSPJOA 2022, and an explanation of where further information may be obtained in relation to this;
  - (g) a reference to the pension savings statement that may be provided in relation to the member, and an explanation of where further information may be obtained in relation to this;
  - (h) a description of any amounts of interest (other than as already provided under paragraph (1)(a)(i) and (b)(i)), that are, or may be, payable by virtue of provision made by virtue of section 26(1)(a) of PSPJOA 2022;
  - (i) where the condition in section 29(3) of PSPJOA 2022 is satisfied, a description of—
    - (i) the period of the person’s relevant opted-out service;
    - (ii) any conditions as mentioned in section 5(5)(b) of PSPJOA 2022 that are specified in scheme regulations made by virtue of section 5(1) of PSPJOA 2022; and
    - (iii) any requirements regarding the making of an election, including any requirements as mentioned in section 5(5)(c), (d) or (e) of PSPJOA 2022, that are specified in scheme regulations made by virtue of section 5(1) of PSPJOA 2022;
  - (j) where the member has retired due to ill health, a description of any further information or evidence required in order to establish—
    - (i) the amount of any benefits currently available under the scheme in respect of the relevant service, and
    - (ii) the amount of any benefits that would be available under the scheme in respect of the relevant service if any election under section 5, 6 or 10 that could be made in relation to the service were made;
  - (k) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.
- (2) Save when a remediable service statement is issued in respect of a member for the first time, a remediable service statement must be combined with a benefit information statement provided under section 14 of PSPA 2013.
- (3) In this direction—
- (a) “relevant opted-out service” has the same meaning as in section 5(7) of PSPJOA 2022;



- (b) “relevant service” has the same meaning as in section 29(2) of PSPJOA 2022.

## PART 3

### Chapter 2 schemes (judicial schemes)

#### CHAPTER 1

##### Exercise of powers

##### **Exercise of powers**

**21.** The powers mentioned in section 62(2) of PSPJOA 2022 may be exercised subject to the provisions of this Part.

#### CHAPTER 2

##### Specific powers

##### **Powers to reduce or waive liabilities**

**22.**—(1) Scheme regulations made by virtue of section 56 of PSPJOA 2022 must include provision under which, save in relation to tax relief amounts, when exercising any powers to reduce or waive a liability owed by a person to the scheme under section 51 of PSPJOA 2022, the scheme manager must—

- (a) have regard to the particular circumstances of the member and (if different) the person by whom the liability is owed;
- (b) apply a presumption in favour of recovering the liability unless it is uneconomic to recover it; and
- (c) have regard to whether, instead of or in addition to reducing or waiving the liability, it is appropriate, in the reasonable opinion of the scheme manager, to exercise any powers exercisable by virtue of any scheme regulations made by virtue of section 61(1)(b) of PSPJOA 2022.

(2) The particular circumstances that may be relevant under paragraph (1)(a) include—

- (a) whether the liability has arisen as a result of an election by virtue of section 40 or 44 of PSPJOA 2022;
- (b) whether the liability has arisen as a result of a 2015 scheme election that is treated as having been made by virtue of section 47 of PSPJOA 2022;
- (c) whether the member has remediable service in an employment or office that is mixed service;
- (d) whether the member is deceased;
- (e) whether, in the reasonable opinion of the scheme manager, payment of the liability in full or in part would result in unreasonable hardship; and
- (f) whether, in the reasonable opinion of the scheme manager, there are any exceptional circumstances which mean the liability should not be paid in full or in part.

(3) Where scheme regulations made by virtue of section 56(2) of PSPJOA 2022 make provision as mentioned in section 56(3), scheme regulations by virtue of section 56(2) of PSPJOA 2022 must include provision in relation to tax relief amounts in accordance with paragraphs (4) to (9).

(4) A liability to pay contributions under section 52 may be reduced by tax relief amounts (including, if appropriate, to nil) where—

- (a) a 2015 scheme election in respect of a member who has remediable service in a judicial office has been made under section 44 of PSPJOA 2022 or is treated as having been made under section 47 of PSPJOA 2022, and

- (b) the appropriate person is liable to pay pension contributions to the scheme under section 52(4) of PSPJOA 2022 in respect of a relevant tax year.
- (5) The tax relief amounts under paragraph (4) are to be determined by the scheme manager.
- (6) Where determining the tax relief amounts under paragraph (5), the scheme manager may adopt an approach which is reasonable in all the circumstances to approximate those amounts.
- (7) The scheme manager must provide the appropriate person with an explanation of how the tax relief amounts for each of the relevant tax years have been determined under paragraph (5).
- (8) The appropriate person may appeal against a determination by the scheme manager under paragraph (5) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.
- (9) If an appeal is made under paragraph (8), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—
  - (a) an altered determination, or confirmation that the original determination stands,
  - (b) a reasoned explanation of its decision, and
  - (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.
- (10) In this direction—
  - (a) “a 2015 scheme election” has the same meaning as in section 44(1) of PSPJOA 2022;
  - (b) “the appropriate person” has the same meaning as in section 52(7) of PSPJOA 2022;
  - (c) “the relevant tax years” means, in relation to pensionable service under a judicial scheme, the tax years from 2015-16 to 2021-22 inclusive;
  - (d) “tax relief amounts” has the same meaning as in section 56(4) of PSPJOA 2022.

**Further powers to make provision about special cases: voluntary contributions**

**23.**—(1) Where scheme regulations made by virtue of section 58(1) of PSPJOA 2022 make provision as mentioned in section 58(2)(a), which includes provision as mentioned in section 58(3), scheme regulations by virtue of section 58(1) of PSPJOA 2022 must include provision in relation to the value of tax relief (referred to in section 58(3)(b)(ii)) in accordance with paragraphs (2) to (6).

(2) The tax relief amount mentioned in section 58(3)(b)(ii) is to be determined by the scheme manager.

(3) Where determining the tax relief amount under paragraph (2), the scheme manager may adopt an approach which is reasonable in all the circumstances to approximate those amounts.

(4) The scheme manager must provide the appropriate person with an explanation of how the tax relief amount for each of the relevant tax years has been determined under paragraph (2).

(5) The appropriate person may appeal against a determination by the scheme manager under paragraph (2) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(6) If an appeal is made under paragraph (5), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(7) In this direction—

- (a) “the appropriate person” has the same meaning as in section 52(7) of PSPJOA 2022;

- (b) “the relevant tax years” means, in relation to pensionable service under a judicial scheme, the tax years from 2015-16 to 2021-22 inclusive.

### **Further powers to make provision about special cases: scheme pays**

**24.**—(1) Scheme regulations for a judicial scheme must, by virtue of section 58(1) of PSPJOA 2022, include provision in accordance with paragraphs (2) to (6).

(2) Where an individual who has any remediable service is unable to give an effective notice to the scheme administrator under section 237B(3) of FA 2004 in relation to an in-scope tax year because the time limit in section 237BA has passed, that individual may, by notice in writing, request that the scheme administrator of the scheme pays all or part of any annual allowance charge arising in that tax year.

(3) Upon receipt of the notice mentioned in paragraph (2), the scheme administrator must pay all or part of any annual allowance charge arising in that tax year, in accordance with the notice.

(4) Together with any pension savings statement, the scheme administrator must provide information to the individual in relation to the process for making a request under paragraph (2) and the consequences of making such a request.

(5) Where, in relation to an individual’s remediable service—

- (a) the individual has not given a notice to the scheme administrator under section 237B(3) of FA 2004 in relation to an in-scope tax year, and
- (b) nevertheless, the scheme administrator has paid any annual allowance charge arising in that tax year,

the scheme administrator must pay any additional annual allowance tax charge arising in that tax year.

(6) Together with any pension savings statement, the scheme administrator must provide information to the individual about the payment under paragraph (5) and the consequences of that payment.

(7) In this direction, a tax year is “in-scope” in relation to an individual if any necessary adjustment to the amount of income tax paid by that individual in that tax year is capable of being enforced by HMRC under the Income Tax Acts.

## **CHAPTER 3**

### **Compensation**

#### **Power to pay compensation**

**25.**—(1) When exercising the power to pay amounts by way of compensation by virtue of section 59(1) of PSPJOA 2022, the scheme manager must—

- (a) have regard to the purpose of the compensation,
- (b) comply with the principle of regularity,
- (c) comply with the principle of propriety,
- (d) comply with the principle of value for money,
- (e) have regard to the particular circumstances of the member and (if different) the person to whom the compensation is to be paid,
- (f) have regard to whether, in the reasonable opinion of the scheme manager, sufficient evidence has been provided or is otherwise available to the scheme manager to establish—
  - (i) whether, and to what extent, either of the two conditions contained in section 59(4) or (5) of PSPJOA 2022 are met,
  - (ii) the existence, nature and extent of the loss incurred by a member, or by a member’s personal representatives,

- (iii) whether, and to what extent, the loss incurred by a member, or by a member’s personal representatives, meets one of the descriptions in direction 26, and
  - (iv) the quantum of the compensation (as appropriate to the nature and extent of any loss established),
- (g) have regard to whether, if a claim for compensation were brought in litigation, it is more likely than not that compensation would be awarded and, if so, have regard to the likely quantum of the compensation that would be awarded,
  - (h) in determining the quantum of the compensation, have regard to whether, and to what extent, the member (or, if different, the person to whom the amounts by way of compensation are to be paid) has, or should have, taken reasonable steps to mitigate the loss,
  - (i) subject to sub-paragraph (h), ensure any payment of amounts by way of compensation is reasonable and proportionate to the loss incurred by the member, or by the member’s personal representatives, and
  - (j) in relation to a loss which falls within the condition in section 59(4) of PSPJOA 2022, not make any payment of amounts by way of compensation which would allow the member (or, if different, the person to whom the amounts by way of compensation are to be paid) to gain an unreasonable financial advantage compared to what would have happened if there had not been a relevant breach of a non-discrimination rule.
- (2) For the purposes of paragraph (1)(a), the “purpose of the compensation” means—
- (a) in relation to a loss which falls within the condition in section 59(4) of PSPJOA 2022, the purpose to pay only such amounts by way of compensation (if any) as are necessary (and no more than are necessary) to put the member (or, if different, the person to whom the amounts by way of compensation are to be paid) into the position they would have been in had there not been a relevant breach of a non-discrimination rule, or
  - (b) in relation to a loss which falls within the condition in section 59(5) of PSPJOA 2022, the purpose to pay only such amounts by way of compensation (if any) as are necessary (and no more than are necessary) to compensate the member (or, if different, the person to whom the amounts by way of compensation are to be paid) reasonably in respect of the loss.
- (3) For the purposes of paragraph (1)(b), when considering what the principle of regularity requires, the scheme manager must have regard to any applicable legislation and wider legal principles.
- (4) For the purposes of paragraph (1)(c), when considering what the principle of propriety requires, the scheme manager must have regard to maintaining high standards of public conduct, ensuring robust governance, and ensuring compliance with any applicable financial controls or reporting obligations.
- (5) For the purposes of paragraph (1)(d), when considering what the principle of value for money requires, the scheme manager must have regard to whether, in comparison to any reasonable alternative possibilities or doing nothing, any payment of amounts by way of compensation delivers value for the Exchequer as a whole.

**Compensatable losses**

**26.—**(1) For the purposes of section 59(3)(b) of PSPJOA 2022, a loss incurred by a member, or by a member’s personal representatives, is compensatable if and to the extent that it falls within one of the descriptions in paragraph (2) or (3).

(2) A loss falls within this paragraph where the condition contained in section 59(4) of PSPJOA 2022 is met and the loss is—

- (a) a direct financial loss, or
- (b) a specified Part 4 tax loss.

(3) A loss falls within this paragraph where the condition contained in section 59(5) of PSPJOA 2022 is met and the loss is—

- (a) a direct financial loss which is directly related to the member’s remediable service in an employment or office which is mixed service, or
  - (b) a specified Part 4 tax loss.
- (4) For the purposes of paragraph (2)(b) or (3)(b), a Part 4 tax loss is a “specified Part 4 tax loss” if and to the extent that it falls within one of the following descriptions—
- (a) where, by reason of a legacy scheme election being made by virtue of section 40(1) of PSPJOA 2022 (which has the effect set out in section 42(2) to (5)), a member has overpaid an annual allowance charge in relation to an out-of-scope tax year, the amount of the overpayment;
  - (b) where, by reason of a legacy scheme election being made by virtue of section 40(1) of PSPJOA 2022 (which has the effect set out in section 42(2) to (5)), a member has overpaid a lifetime allowance charge in relation to an out-of-scope tax year, the amount of the overpayment;
  - (c) where, by reason of a legacy scheme election being made by virtue of section 40(1) of PSPJOA 2022 (which has the effect set out in section 42(2) to (5)), a member has overpaid an annual allowance charge or a lifetime allowance charge in relation to a registered pension scheme which is not—
    - (i) a Chapter 1 scheme,
    - (ii) a judicial scheme, or
    - (iii) a local government scheme,
 and the member is unable to recover the amount of the overpaid lifetime allowance charge from that registered pension scheme, the amount of the overpayment that is unrecoverable from that registered pension scheme;
  - (d) where, notwithstanding a legacy scheme election being made by virtue of section 40(1) of PSPJOA 2022 (which has the effect set out in section 42(2) to (5))—
    - (i) any lifetime allowance protection to which the member was entitled immediately before the start of the relevant tax years cannot be restored because the member can no longer meet the statutory criteria,
    - (ii) the member is unable to mitigate their loss in full by applying for IP 2016, and
    - (iii) the member is no longer accruing pension benefits,
 the difference between the amount of any additional lifetime allowance charge the member has paid as compared to what the amount of the lifetime allowance charge would have been if the lifetime allowance protection was restored, less the amount of any mitigation that is possible by applying for IP 2016, and less any appropriate reduction;
  - (e) where section 52(3) of PSPJOA 2022 applies in relation to a member, the amount by which the paid contributions amount exceeds the payable contributions amount, less the amount of income tax which would have been due in respect of the payable contributions amount if the tax year was in-scope; or
  - (f) where the tax relief amounts, as calculated under provision made by virtue of section 56(2) of PSPJOA 2022 in the circumstances described in direction 22(4), exceed the pension contributions which would otherwise be payable under section 52(4) of PSPJOA 2022 if there were no reduction for tax relief amounts, the amount of the excess tax relief amounts.
- (5) In paragraph (4)(a) and (b), a tax year is “out-of-scope” in relation to an individual where—
- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
  - (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.
- (6) In paragraph (4)(d), the “appropriate reduction” is the amount (if any) of any tax relief under section 188 of FA 2004 on pension contributions that the member has received in the relevant tax

years which the member would not have received had any lifetime allowance protection been maintained.

(7) In paragraph (4)(e), the reference to a tax year being “in-scope” in relation to an individual has the same meaning as in section 52(8)(a) of PSPJOA 2022.

(8) In this direction—

- (a) “the relevant tax years” means, in relation to pensionable service under a judicial scheme, the tax years from 2015-16 to 2021-22 inclusive;
- (b) “the start of the relevant tax years” means, in relation to pensionable service under a judicial scheme, 6th April 2015.

## CHAPTER 4

### Interest and process

#### **Interest: general**

**27.** Scheme regulations for a judicial scheme must, by virtue of section 61(1)(a) of PSPJOA 2022, include provision under which interest must be calculated and paid on relevant amounts in accordance with directions 28 to 30.

#### **Interest: rates**

**28.**—(1) Where the scheme manager pays an amount by way of compensation under section 59(1) of PSPJOA 2022 in respect of a compensatable loss which is a Part 4 tax loss, interest must be calculated on that amount in accordance with the provisions of the Taxes (Interest Rate) Regulations 1989 as if that amount were overpaid tax.

(2) Save where paragraph (1) applies, interest must be calculated as follows.

(3) Where a person is required to pay an amount to the scheme—

- (a) interest must be calculated as compound interest which accrues from day to day, and
- (b) the rate of interest to be applied must be the NS&I Equivalent Savings Rate for the time being.

(4) Subject to paragraph (6), where a scheme manager is required to pay an amount to a person—

- (a) interest must be calculated as simple interest which accrues from day to day, and
- (b) subject to paragraph (5), the rate of interest to be applied must be the rate fixed, for the time being, by section 17(1) of the Judgments Act 1838 and, in Scotland, the rate fixed, for the time being, by section 9 of the Sheriff Courts (Scotland) Extracts Act 1892.

(5) Where the rate of interest in paragraph (4)(b) has varied during a period for which interest is to be calculated, the scheme manager may, if it considers it appropriate in the interests of simplicity, apply such median or average of those rates as seems to it appropriate.

(6) Where the scheme manager pays an amount of compensation to the member or the member’s personal representatives under section 59(1) of PSPJOA 2022, in respect of a compensatable loss which is a direct financial loss, the scheme manager may determine whether to pay interest on that amount in accordance with paragraph (4) or not.

(7) In this direction, “the NS&I Equivalent Savings Rate” means—

- (a) in relation to times prior to the date these Directions are made, the NS&I Equivalent Savings Rate as specified in the Schedule to these Directions,
- (b) in relation to times from the date these Directions are made, such interest rate for the time being as determined and published by the Treasury periodically.

## **Interest: periods**

**29.**—(1) Where a beneficiary is required to pay an amount to the scheme under section 51(2) of PSPJOA 2022, interest must be calculated in respect of that amount from the dates that any amounts of overpaid benefits were paid to the date of payment.

(2) For the purposes of paragraph (1), the dates that any amounts of overpaid benefits were paid must be determined by the scheme manager using one of the following methods—

- (a) any amounts of overpaid benefits that were paid during each relevant pension year are treated as having been paid from the day which falls half-way through that pension year (or, if the overpaid benefits relate to a period less than a whole pension year, from the day which falls half-way through that period), or
- (b) any amounts of overpaid benefits are treated as having been paid from the day when each overpayment was made.

(3) Where the scheme manager is required to pay an amount to a beneficiary under section 51(3) of PSPJOA 2022, interest must be calculated on that amount from the mid-point date to the date of payment.

(4) In paragraph (3), “the mid-point date” means the day which falls half-way through the period beginning on the date when pension benefits were first underpaid, and ending on the date of payment.

(5) Where a beneficiary is required to pay an amount to the scheme under section 51(4) of PSPJOA 2022, interest must be calculated on that amount from the date that the lump sum benefits were paid to the date of payment.

(6) Where the scheme manager is required to pay an amount to a beneficiary under section 51(5) of PSPJOA 2022, interest must be calculated on that amount from the date that the lump sum benefits were paid to the date of payment.

(7) Where the scheme manager is required to pay an amount to the appropriate person under section 52(2) of PSPJOA 2022, interest must be calculated on that amount from the mid-point date to the date of payment.

(8) In paragraph (7), “the mid-point date” means the day which falls half-way through the period beginning on the date when pension contributions were first overpaid, and ending on the date of payment.

(9) Where the appropriate person is required to pay pension contributions to the scheme under section 52(4) of PSPJOA 2022, interest must be calculated in respect of that amount (after any reduction for tax relief amounts) from the dates that any amounts of underpaid contributions would have fallen due to the date of payment.

(10) For the purposes of paragraph (9), the dates that any amounts of underpaid contributions would have fallen due must be determined by the scheme manager using one of the following methods—

- (a) any amounts of underpaid contributions (after any reduction for tax relief amounts) that would have fallen due during each relevant pension year are treated as falling due from the day which falls half-way through that pension year (or, if the underpaid contributions relate to a period less than a whole pension year, from the day which falls half-way through that period), or
- (b) any amounts of underpaid contributions (after any reduction for tax relief amounts) are treated as falling due from the day when each underpayment would have fallen due.

(11) Where the scheme manager is required to pay an amount by way of compensation to the appropriate person under section 53(3) of PSPJOA 2022, interest must be calculated in respect of that from the mid-point date to the date of payment.

(12) In paragraph (11), “the mid-point date” means the day which falls half-way through the period beginning on the date when the effective pension age payments were first overpaid, and ending on the date of payment.

(13) Where the appropriate person is required to pay an amount to the employer under section 54(2) of PSPJOA 2022, interest must be calculated in respect of that amount from the date that the transitional protection allowance was paid to the date of payment.

(14) Where the scheme manager is required to pay an amount by way of compensation to the member or the member's personal representatives under scheme regulations made by virtue of section 58(2)(a) of PSPJOA 2022, which make provision as mentioned in section 58(3) of PSPJOA 2022, interest must be calculated on that amount (after any reduction for tax relief amounts) from the mid-point date to the date of payment.

(15) In paragraph (14), "the mid-point date" means the day which falls half-way through the period beginning on the date when the voluntary contributions were first overpaid, and ending on the date of payment.

(16) Where the scheme manager pays an amount by way of compensation to the member or the member's personal representatives under section 59(1) of PSPJOA 2022, in respect of a compensatable loss which is a direct financial loss, interest must be calculated on that amount from the date that direct financial loss arose to the date of payment.

(17) In this direction, where the number of days in a period is even, a reference to the day which falls half-way through that period is to be read as a reference to the first day of the second half of the period.

(18) In this direction—

- (a) "any reduction for tax relief amounts" means, as the context requires, any reduction for tax relief amounts under scheme regulations made by virtue of—
  - (i) section 56(2) of PSPJOA 2022 which make provision as mentioned in section 56(3), or
  - (ii) section 58(2)(a) of PSPJOA 2022 which make provision as mentioned in section 58(3);
- (b) "the appropriate person" has the same meaning as in section 52(7), 53(4) or 54(3) of PSPJOA 2022 as the context requires;
- (c) "relevant pension year" means, in relation to pensionable service under a judicial scheme, the twelve months ending with 31st March for the years from 2015-16 to 2021-22 inclusive.

### **Interest: other**

**30.**—(1) In relation to any other relevant amounts, the scheme manager may determine whether interest is paid and, if so, what rate of interest applies and how interest is calculated.

(2) Where the scheme manager makes a determination under paragraph (1), the scheme manager must provide the appropriate person with an explanation of what rate of interest applies and how interest has been calculated on any relevant amounts.

(3) The appropriate person may appeal against a determination by the scheme manager under paragraph (1) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount of interest, supported by any evidence the appropriate person considers relevant.

(4) If an appeal is made under paragraph (3), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(5) In this direction, "the appropriate person" has the same meaning as in section 52(7) of PSPJOA 2022.



### **Process: netting off**

**31.**—(1) Scheme regulations for a judicial scheme must, by virtue of section 61(1)(b) of PSPJOA 2022, include provision in accordance with paragraphs (2) to (9).

(2) Where relevant amounts (and any interest on them) fall to be paid at the same or approximately the same times, the scheme manager may determine that those relevant amounts must be aggregated and that the difference must be paid by a person to the scheme, or by the scheme to a person (as the case may be), as follows.

(3) Each relevant amount that is payable by a person to the scheme, together with any interest on that relevant amount, must be aggregated.

(4) Each relevant amount that is payable by a scheme to a person, together with any interest on that relevant amount, must be aggregated.

(5) Where the aggregate sum in paragraph (2) exceeds the aggregate sum in paragraph (3), the person must pay the difference to the scheme.

(6) Where the aggregate sum in paragraph (3) exceeds the aggregate sum in paragraph (2), the scheme must pay the difference to the person.

(7) The scheme manager must provide the appropriate person with an explanation of any determination under paragraph (1).

(8) The appropriate person may appeal against a determination by the scheme manager under paragraph (1) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative approach, supported by any evidence the appropriate person considers relevant.

(9) If an appeal is made under paragraph (7), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(10) In this direction—

- (a) “the appropriate person” has the same meaning as in section 52(7) of PSPJOA 2022;
- (b) “relevant amounts” has the same meaning as in section 61(3) of PSPJOA 2022.

## **PART 4**

### **Chapter 3 schemes (local government schemes)**

#### **CHAPTER 1**

##### **Exercise of powers**

### **Exercise of powers**

**32.** The powers mentioned in section 85(2) of PSPJOA 2022 may be exercised subject to the provisions of this Part.

#### **CHAPTER 2**

##### **Compensation**

### **Power to pay compensation**

**33.**—(1) When exercising the power to pay amounts by way of compensation by virtue of section 82(1) of PSPJOA 2022, the scheme manager must—

- (a) have regard to the purpose of the compensation,

- (b) comply with the principle of regularity,
  - (c) comply with the principle of propriety,
  - (d) comply with the principle of value for money,
  - (e) have regard to the particular circumstances of the member and (if different) the person to whom the compensation is to be paid,
  - (f) have regard to whether, in the reasonable opinion of the scheme manager, sufficient evidence has been provided or is otherwise available to the scheme manager to establish—
    - (i) whether, and to what extent, either of the two conditions contained in section 82(4) or (5) of PSPJOA 2022 are met,
    - (ii) the existence, nature and extent of the loss incurred by a member, or by a member’s personal representatives,
    - (iii) whether, and to what extent, the loss incurred by a member, or by a member’s personal representatives, meets one of the descriptions in direction 34, and
    - (iv) the quantum of the compensation (as appropriate to the nature and extent of any loss established),
  - (g) have regard to whether, if a claim for compensation were brought in litigation, it is more likely than not that compensation would be awarded and, if so, have regard to the likely quantum of the compensation that would be awarded,
  - (h) in determining the quantum of the compensation, have regard to whether, and to what extent, the member (or, if different, the person to whom the amounts by way of compensation are to be paid) has, or should have, taken reasonable steps to mitigate the loss,
  - (i) subject to sub-paragraph (h), ensure any payment of amounts by way of compensation is reasonable and proportionate to the loss incurred by the member, or by the member’s personal representatives, and
  - (j) in relation to a loss which falls within the condition in section 82(4) of PSPJOA 2022, not make any payment of amounts by way of compensation which would allow the member (or, if different, the person to whom the amounts by way of compensation are to be paid) to gain an unreasonable financial advantage compared to what would have happened if there had not been a relevant breach of a non-discrimination rule.
- (2) For the purposes of paragraph (1)(a), the “purpose of the compensation” means—
- (a) in relation to a loss which falls within the condition in section 82(4) of PSPJOA 2022, the purpose to pay only such amounts by way of compensation (if any) as are necessary (and no more than are necessary) to put the member (or, if different, the person to whom the amounts by way of compensation are to be paid) into the position they would have been in had there not been a relevant breach of a non-discrimination rule, or
  - (b) in relation to a loss which falls within the condition in section 82(5) of PSPJOA 2022, the purpose to pay only such amounts by way of compensation (if any) as are necessary (and no more than are necessary) to compensate the member (or, if different, the person to whom the amounts by way of compensation are to be paid) reasonably in respect of the loss.
- (3) For the purposes of paragraph (1)(b), when considering what the principle of regularity requires, the scheme manager must have regard to any applicable legislation and wider legal principles.
- (4) For the purposes of paragraph (1)(c), when considering what the principle of propriety requires, the scheme manager must have regard to maintaining high standards of public conduct, ensuring robust governance, and ensuring compliance with any applicable financial controls or reporting obligations.
- (5) For the purposes of paragraph (1)(d), when considering what the principle of value for money requires, the scheme manager must have regard to whether, in comparison to any

reasonable alternative possibilities or doing nothing, any payment of amounts by way of compensation delivers value for the scheme employers of the relevant pension fund.

(6) The scheme manager may only pay amounts by way of compensation by virtue of section 82(1) of PSPJOA 2022 in respect of a Part 4 tax loss to the extent that the compensation relates to—

- (a) a tax charge which the member originally paid directly to HMRC in money, or
- (b) tax relief.

(7) In this direction, in England and Wales—

- (a) “an admission body” has the meaning given in paragraph 1 of Part 3 of Schedule 2 of the LGPS(E&W)R 2013;
- (b) “the scheme employers” means the bodies listed in Schedule 2 of the LGPS(E&W)R 2013 employing an employee who is eligible to be a member and includes an admission body;
- (c) “the relevant pension fund” means the fund specified in Schedule 3 of the LGPS(E&W)R 2013 in relation to the person in respect of whom the compensation is being paid.

(8) In this direction, in Scotland—

- (a) “an admission body” has the meaning given in paragraph 1 of Part 2 of Schedule 2 of the LGPS(S)R 2018;
- (b) “the scheme employers” means the bodies listed in Schedule 2 of the LGPS(S)R 2018 and has any employee who is eligible to be a member and includes an admission body;
- (c) “the relevant pension fund” means the fund specified in Schedule 4 of the LGPS(S)R 2018 in relation to the person in respect of whom the compensation is being paid.

### **Compensatable losses: compensation**

**34.**—(1) For the purposes of section 82(3)(b) of PSPJOA 2022, a loss incurred by a member, or by a member’s personal representatives, is compensatable if and to the extent that it falls within one of the descriptions in paragraph (2) or (3).

(2) A loss falls within this paragraph where the condition contained in section 82(4) of PSPJOA 2022 is met and the loss is—

- (a) a direct financial loss, or
- (b) a specified Part 4 tax loss.

(3) A loss falls within this paragraph where the condition contained in section 82(5) of PSPJOA 2022 is met and the loss is a specified Part 4 tax loss.

(4) For the purposes of paragraph (2)(b) or (3), a Part 4 tax loss is a “specified Part 4 tax loss” if and to the extent that it falls within one of the following descriptions—

- (a) where—
  - (i) by reason of an increase in the benefits payable to a member under regulations made (or treated as having been made) by virtue of section 78(1) of PSPJOA 2022,
  - (ii) that member has overpaid an annual allowance charge in relation to an out-of-scope tax year,

the amount of the overpayment; or

- (b) where—
  - (i) by reason of an increase in the benefits payable to a member under regulations made (or treated as having been made) by virtue of section 78(1) of PSPJOA 2022,
  - (ii) that member has overpaid a lifetime allowance charge in relation to a subsequent tax year when compared to the amount of lifetime allowance charge the member would have paid in that subsequent tax year if the increase in the benefits payable to the member had occurred before the original benefit crystallisation event,

the amount of the overpayment, less the amount of any additional lifetime allowance charge the member would have paid at the original benefit crystallisation event if the increase in the benefits payable to the member had occurred before the original benefit crystallisation event.

- (5) In this direction, a tax year is “out-of-scope” in relation to an individual where—
- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
  - (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.
- (6) In this direction—
- (a) a “benefit crystallisation event” has the same meaning as in section 216 of FA 2004;
  - (b) “the relevant tax years” in relation to pensionable service under a local government new scheme, means—
    - (i) in relation to service which is pensionable service under a local government new scheme which relates to persons in England and Wales, the tax years from 2014-15 to 2021-22 inclusive,
    - (ii) in relation to service which is pensionable service under a local government new scheme which relates to persons in Scotland, the tax years from 2015-16 to 2021-22 inclusive;
  - (c) “a subsequent tax year” means a tax year from 2022-23 onwards.

### **Indirect compensation**

**35.**—(1) Scheme regulations for a local government new scheme must, by virtue of section 83(1) of PSPJOA 2022, include provision in accordance with paragraphs (2) to (4).

(2) When exercising any powers exercisable by virtue of scheme regulations made by virtue of section 83(1) of PSPJOA 2022 to pay additional benefits under the scheme to the member, the scheme manager must comply with the requirements contained in direction 33(1) in relation to the exercise of those powers as those requirements apply to the power to pay amounts by way of compensation by virtue of section 82(1) of PSPJOA 2022 (and the reference in direction 33(1)(f)(iii) to direction 34 is to be read as a reference to direction 36, accordingly).

(3) The scheme manager must obtain actuarial advice in accordance with provision made in scheme regulations before determining what additional benefits to pay to a member.

(4) When determining what additional benefits to pay to a member, the scheme manager must, in accordance with the actuarial advice obtained in accordance with provision made in scheme regulations, apply the actuarial factors that were in force when the pension debit was calculated originally.

### **Compensatable losses: indirect compensation**

**36.**—(1) For the purposes of section 82(3)(b) when read with section 83 of PSPJOA 2022, a Part 4 tax loss incurred by a member is compensatable if and to the extent that it falls within the description in paragraph (2).

(2) A loss falls within this paragraph where the condition contained in section 82(4) or 82(5) of PSPJOA 2022 is met and the loss is a specified Part 4 tax loss.

(3) For the purposes of paragraph (2), a Part 4 tax loss is a “specified Part 4 tax loss” if and to the extent that it falls within one of the following descriptions—

- (a) where—
  - (i) by reason of an increase in the benefits payable to a member under regulations made (or treated as having been made) by virtue of section 78(1) of PSPJOA 2022,

- (ii) a scheme administrator has overpaid an annual allowance charge in respect of that member (whether pursuant to a notice given by the member to the scheme administrator under section 237B(3) of FA 2004, or not) in relation to an out-of-scope tax year,

the amount of the overpayment; or

- (b) where—

- (i) by reason of an increase in the benefits payable to the individual under regulations made (or treated as having been made) by virtue of section 78(1) of PSPJOA 2022,
- (ii) a scheme administrator has overpaid a lifetime allowance charge in respect of a member in relation to a subsequent tax year when compared to the amount of lifetime allowance charge the scheme administrator would have paid in respect of that member in that subsequent tax year if the increase in the benefits payable to the member had occurred before the original benefit crystallisation event,

the amount of the overpayment, less the amount of any additional lifetime allowance charge the scheme administrator would have paid in respect of the member at the original benefit crystallisation event if the increase in the benefits payable to the member had occurred before the original benefit crystallisation event.

- (4) In this direction, a tax year is “out-of-scope” in relation to an individual where—

- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in that tax year by that individual that gives rise to their Part 4 tax loss, and
- (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.

(5) In this direction, “the relevant tax years” means, in relation to pensionable service under a local government scheme, the tax years from 2014-15 to 2021-22 inclusive.

## CHAPTER 3

### Interest and process

#### **Interest: general**

**37.** Scheme regulations for a local government new scheme must, by virtue of section 84(1)(a) of PSPJOA 2022, include provision under which interest must be calculated and paid on relevant amounts in accordance with directions 38 to 40.

#### **Interest: rates**

**38.—**(1) Where the scheme manager pays an amount by way of compensation under section 82(1) of PSPJOA 2022 in respect of a compensatable loss which is a Part 4 tax loss, interest must be calculated on that amount in accordance with the provisions of the Taxes (Interest Rate) Regulations 1989 as if that amount were overpaid tax.

(2) Save where paragraph (1) applies, interest must be calculated as follows.

(3) Where a person is required to pay an amount to the scheme—

- (a) interest must be calculated as compound interest which accrues from day to day, and
- (b) the rate of interest to be applied must be the NS&I Equivalent Savings Rate for the time being.

(4) Save where specified otherwise in scheme regulations for a local government new scheme, where a scheme manager is required to pay an amount to a person—

- (a) interest must be calculated as simple interest which accrues from day to day, and
- (b) subject to paragraph (5), the rate of interest to be applied must be the rate fixed, for the time being, by section 17(1) of the Judgments Act 1838 and, in Scotland, the rate fixed, for the time being, by section 9 of the Sheriff Courts (Scotland) Extracts Act 1892.

(5) Where the rate of interest in paragraph (4)(b) has varied during a period for which interest is to be calculated, the scheme manager may, if it considers it appropriate in the interests of simplicity, apply such median or average of those rates as seems to it appropriate.

(6) In this direction, “the NS&I Equivalent Savings Rate” means—

- (a) in relation to times prior to the date these Directions are made, the NS&I Equivalent Savings Rate as specified in the Schedule to these Directions,
- (b) in relation to times from the date these Directions are made, such interest rate for the time being as determined and published by the Treasury periodically.

### **Interest: periods**

**39.**—(1) Where the scheme manager pays amounts by way of compensation to members or personal representatives under section 82(1) of PSPJOA 2022, in respect of a compensatable loss which is a direct financial loss, interest must be calculated on that amount from the date that direct financial loss arose to the date of payment.

(2) Scheme regulations for a local government new scheme must, by virtue of section 84(1)(a) of PSPJOA 2022, include provision about the periods over which interest must be calculated in relation to specified relevant amounts, as specified in scheme regulations for a local government new scheme.

### **Interest: other**

**40.**—(1) In relation to any other relevant amounts, the scheme manager may determine, having regard to any applicable statutory guidance issued by the responsible authority, whether interest is paid and, if so, what rate of interest applies and how interest is calculated.

(2) Where the scheme manager makes a determination under paragraph (1), the scheme manager must provide the appropriate person with an explanation of what rate of interest applies and how interest has been calculated on any relevant amounts.

(3) The appropriate person may appeal against a determination by the scheme manager under paragraph (1) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount of interest, supported by any evidence the appropriate person considers relevant.

(4) If an appeal is made under paragraph (3), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(5) In this direction, “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives.

### **Process: general**

**41.** Scheme regulations for a local government new scheme must, by virtue of section 84(1)(b) of PSPJOA 2022, include provision in accordance with directions 42 and 43.

### **Process: application for compensation**

**42.**—(1) Relevant amounts owed by the scheme to a person by virtue of section 82(1) or 83(1) of PSPJOA 2022 may be paid only on the making of an application to the scheme manager by the appropriate person in such form and manner as determined by the scheme manager, subject to paragraph (2).

(2) Where the relevant amounts owed by the scheme to a person by virtue of section 82(1) or 83(1) of PSPJOA 2022 are in respect of a Part 4 tax loss mentioned in direction 34(4)(a), (b), 36(3)(a), or (b), the application mentioned in paragraph (1) must include the following—

- (a) a calculation obtained by the appropriate person from HMRC (by virtue of HMRC's compensation function by virtue of section 104 of PSPJOA 2022), of any compensation or indirect compensation owed by the scheme to the person in relation to each out-of-scope tax year,
- (b) a signed declaration by the appropriate person that the information provided to HMRC in order to obtain the calculation mentioned in paragraph (2)(a), and the calculation itself, is correct and complete to the best of their knowledge and belief, and
- (c) a warning that, if false information is given, the appropriate person signing the declaration mentioned in paragraph (2)(b) may face civil action or prosecution, or both.

(3) The scheme manager must determine the relevant amounts (if any) owed by the scheme to a person by virtue of section 82(1) or 83(1) of PSPJOA 2022 following receipt of the application mentioned in paragraph (1).

(4) The scheme manager must provide the appropriate person with an explanation of how the relevant amounts (if any) have been determined under paragraph (3).

(5) The appropriate person may appeal against a determination by the scheme manager under paragraph (3) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative amount, supported by any evidence the appropriate person considers relevant.

(6) If an appeal is made under paragraph (5), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(7) In this direction, a tax year is “out-of-scope” in relation to an individual where—

- (a) that individual is unable to recover from HMRC the amount of overpaid income tax paid in relation to that tax year by that individual that gives rise to their Part 4 tax loss, and
- (b) the reason for that is because the individual may no longer make a claim under the Income Tax Acts to recover from HMRC the amount of overpaid income tax because the statutory time limit has passed.

(8) In this direction, “the appropriate person” means the member or, if the member is deceased, the member's personal representatives.

### **Process: netting off**

**43.**—(1) Where relevant amounts (and any interest on them) fall to be paid at the same or approximately the same times, the scheme manager may determine that those relevant amounts must be aggregated and that the difference must be paid by a person to the scheme, or by the scheme to a person (as the case may be), as follows.

(2) Each relevant amount that is payable by a person to the scheme, together with any interest on that relevant amount, must be aggregated.

(3) Each relevant amount that is payable by a scheme to a person, together with any interest on that relevant amount, must be aggregated.

(4) Where the aggregate sum in paragraph (2) exceeds the aggregate sum in paragraph (3), the person must pay the difference to the scheme.

(5) Where the aggregate sum in paragraph (3) exceeds the aggregate sum in paragraph (2), the scheme must pay the difference to the person.

(6) The scheme manager must provide the appropriate person with an explanation of any determination under paragraph (1).

(7) The appropriate person may appeal against a determination by the scheme manager under paragraph (1) by notice in writing to the scheme manager, together with a reasoned explanation of a proposed alternative approach, supported by any evidence the appropriate person considers relevant.

(8) If an appeal is made under paragraph (7), the scheme manager must decide whether to alter its determination, and provide to the appropriate person—

- (a) an altered determination, or confirmation that the original determination stands,
- (b) a reasoned explanation of its decision, and
- (c) a description of the dispute resolution arrangements that apply to the scheme under section 50 of PA 1995.

(9) In this direction, “the appropriate person” means the member or, if the member is deceased, the member’s personal representatives.

Signed

*Steve Double*  
*Nigel Huddleston*

14th December 2022

Two of the Lords Commissioners of His Majesty’s Treasury

## SCHEDULE

Directions 14, 28 and 38

### NS&I EQUIVALENT SAVINGS RATE

<i>1. Effective from</i>	<i>2. Gross Annual Equivalent Rate</i>
1 April 2014	1.10%
6 June 2016	0.80%
1 May 2017	0.70%
1 December 2017	0.95%
1 October 2018	1.00%
24 November 2020	0.15%
29 December 2021	0.35%
10 February 2022	0.50%
21 July 2022	1.20%
25 October 2022	1.80%
13 December 2022	2.30%

### EXPLANATORY NOTE

*(This note is not part of the Directions)*

These Directions set out how certain powers contained in the Public Service Pensions and Judicial Offices Act 2022 (c. 7) (“PSPJOA 2022”) must be exercised, how compensation may be paid, and expand upon the information that must be provided under that Act.

Part 1 of PSPJOA 2022 includes retrospective provision to rectify unlawful discrimination that arose from transitional provisions when existing public service pension schemes were closed to certain members between 2014 to 2016. In particular, it provides that affected members of public service pension schemes (except members of local government schemes) can choose the benefits they will receive or, for members of judicial schemes, the scheme they will receive benefits from, for the relevant remedy period (1 April 2015 to 31 March 2022). Members of local government schemes will receive an automatic uplift in their benefits in the remedy period (1 April 2015 to 31 March 2022 or from 1 April 2014 for local government pension schemes in England and Wales) where the remedy applies.



PSPJOA 2022 contains some operative provisions that apply to members of public service pension schemes generally and also a number of powers allowing scheme regulations to be made for each public service pension scheme. Scheme regulations are made under powers in the Public Service Pensions Act 2013 (as amended by PSPJOA 2022) and, subject to some exceptions, require the consent of the Treasury before being made. PSPJOA 2022 provides that many of the powers in that Act must be exercised in accordance with Treasury directions.

Part 1 provides for commencement, extent, application and interpretation.

Part 2 contains provisions that apply to Chapter 1 schemes, being public service pension schemes other than judicial schemes and local government schemes that are covered by Chapter 1 of Part 1 of PSPJOA 2022.

Directions 3 to 7 and 12 provide for how certain powers in Chapter 1 of Part 1 of PSPJOA 2022 are to be exercised. Directions 8 to 11 provide for how powers to pay compensation or indirect compensation are to be exercised. Directions 13 to 19 provide for how powers in relation to interest and process are to be exercised. Direction 20 provides for what further information must be included in a remediable service statement that is required to be provided under section 29 of PSPJOA 2022.

Part 3 contains provisions that apply to Chapter 2 schemes, being judicial schemes that are covered by Chapter 2 of Part 1 of PSPJOA 2022.

Directions 21 to 24 provide for how certain powers in Chapter 2 of Part 1 of PSPJOA 2022 are to be exercised. Directions 25 and 26 provide for how powers to pay compensation are to be exercised. Directions 27 to 31 provide for how powers in relation to interest and process are to be exercised.

Part 4 contains provisions that apply to Chapter 3 schemes, being local government schemes that are covered by Chapter 3 of Part 1 of PSPJOA 2022.

Direction 32 provides for how certain powers in Chapter 3 of Part 1 of PSPJOA 2022 are to be exercised. Directions 33 to 36 provide for how powers to pay compensation are to be exercised. Directions 37 to 43 provide for how powers in relation to interest and process are to be exercised.