

HMT Remedy Directions



Legislation

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

The Directions were made by HM Treasury (HMT) on 14 December 2022 and came into force on 19 December 2022

The Directions apply to England, NI*, Scotland, and Wales

N.B: The Department of Finance (DoF) are also currently drafting NI Directions which will reflect the equivalent HMT Directions and will cover the NI Firefighters Pension Scheme

Effect

The Directions set out how certain powers in the [Public Service Pensions and Judicial Offices Act \(PSPJOA\) 2022](#) must be exercised

The PSPJOA 2022 gives relevant governments departments powers to rectify the discrimination found in Sargeant by making secondary legislation (scheme regulations) – [Section 27](#)

Additionally, the Directions allow HMT to specify certain conditions which must be met, for example, in relation to Remediable Service Statements (RSS) – [Section 29\(6\)](#)

Structure

Parts

- Part 1 includes the commencement dates and extent, as well as definitions of terms (interpretation)
- Part 2 applies to [Chapter 1 schemes](#) – that is all PSPS except the judicial schemes and LGPS
- Part 3 = Chapter 2 (judicial) schemes
- Part 4 = Chapter 3 (local government) schemes

Chapters

1. Exercise of powers
2. Specific powers
3. Compensation
4. Interest and process
5. Information

4. Powers to reduce/ waive liabilities

[Section 18 PSPJOA 2022](#) – member liability can be reduced or waived under sections 14 to 17 (correction of benefits and correction of contributions) with particular reference to tax relief

Scheme liability can be waived under section 16: facility for FPS 2006 contributions to be retained until a DC election is made (18(8))

Regulations made:

- Must ensure that scheme manager has regard to member circumstances (examples are listed)
- Should presume amounts are recovered unless it is 'uneconomic' to do so
- Allow amounts to be paid in instalments (26(1)(b) PSPJOA 2022)
- Must set out parameters for calculating tax relief – some discretion on establishing marginal rate
- Provide for IDRPs if member disputes tax relief amount

5. Voluntary contributions

Section 20 PSPJOA 2022 – rights to additional benefits purchased through voluntary contributions may be varied (at IC or DC) or extinguished (at rollback), including a return of contributions (20(5)(c))

Final policy position for FPS (added pension) not yet confirmed

Regulations made:

- Must ensure that scheme manager obtains advice from GAD on varying/ extinguishing rights i.e. actuarial factors/ guidance
- Must ensure contributions are attributed to relevant year
- Must set out parameters for calculating tax relief – some discretion on establishing marginal rate
- Provide for IDRPs if member disputes tax relief amount
- Must allow voluntary contributions to be retained by scheme until DC election made

6. Transfers

[Section 21 PSPJOA 2022](#) – transfer rights into or out of the scheme during the remedy period may be varied (at IC or DC) or extinguished (at rollback)

Current policy thinking is that transfer value will be retained under 18(8) PSPJOA 2022 until an election is made. If member cannot take transfer to legacy scheme (i.e. FPS 1992 member or exceeds service cap in FPS 2006) value can be credited in FPS 2015 or compensation paid.

Where a member has transferred out, scheme rules must provide for a TV-RSS to be sent (unless another type of RSS has been provided)

Regulations must ensure that scheme manager obtains advice from GAD on varying/ extinguishing transfer rights i.e. actuarial factors/ guidance, and any transfer is attributed to the relevant year

7. Further powers...

[Section 22 PSPJOA 2022](#) – provides further measures that schemes may make in specific circumstances. Some of the provisions only apply to certain schemes and the Directions state that schemes' secondary legislation must pick up the relevant sections.

This direction also has specific reference to 22(2)(j) – scheme pays. The draft [Public Services Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) Regulations 2023](#) relax the time limits for MSP applications up to tax year 2022-23.

The Directions provide that departments must make regulations to accept VSP applications once the extended deadline has passed (6 July 2025 for active/ deferred; 6 July 2027 for pensioners/ deceased).

8. Power to pay compensation

Section 23 PSPJOA 2022 – allows for compensation to be paid where one of the three conditions set out in the Act is met AND the type of loss is as set out in Treasury Directions

This direction sets out the parameters for making payments of compensation in 8(1)(a) to (j). For example, the scheme manager must have regard to:

- The purpose of the compensation
- The principles of regularity, propriety and value for money
- The member's circumstances and whether sufficient evidence of the loss has been provided
- Whether compensation would likely be awarded if claim brought in litigation
- Whether the member could have mitigated the loss – compensation must be reasonable and proportionate
- The member not being put into a more advantageous financial position than if the discrimination had not occurred

9. Compensatable losses – direct compensation

The Directions go on to set out the scenarios in which direct compensation would apply under section 23(4) to (6) PSPJOA 2022 and how it should be calculated

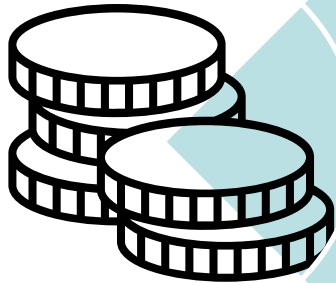
To meet any of the three conditions set out in the Act, the loss must be:

- A direct financial loss
- A specified Part 4 tax loss (FA 2004)

Examples of a Part 4 tax loss are:

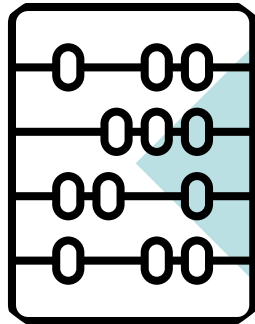
- An IC member paying more AA tax charge (AATC) than they would have done when electing for new scheme benefits
- Overpaid annual or lifetime allowance charge relating to an out-of-scope year or paid in respect of a non-public service scheme
- A member losing LTA IP 2016 when rollback occurs
- Overpaid AATC as a result of treatment of voluntary contributions under section 20(1) – including if member makes a CD claim under [section 25](#)

Compensation – regulation 43 (The Public Services Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023



Compensation payments are exempt from:

- Income tax
- Capital gains tax
- Inheritance tax



Relevant tax relief will be taken into account for the calculation of those payments e.g. return of contributions

10. Indirect compensation

Section 24 PSPJOA 2022

– allows for compensation to be paid in respect of Part 4 tax losses that are not compensated under section 23 i.e.:

It is NOT a tax charge paid to directly to HMRC in money

It DOES NOT relate to tax relief

And, the member is instead paid “such additional benefits” as determined in line with the regulations

This takes place via an adjustment to the member’s scheme pays debit

Advice must be obtained from GAD i.e. actuarial factors/guidance

Factors used must be those in force at the original pension debit date

Direction 11 (compensatable losses: indirect compensation)

Mirrors direction 9; references to member are to scheme administrator

Direct financial losses are excluded

12. Remedial arrangements to pay voluntary contributions

[Section 25 PSPJOA 2022](#) – makes provision for a member to enter into an Added Years contract retrospectively under a contingent decision claim and for voluntary contributions to be tax relieviable

Regulations made under section 25:

- Must set out parameters and method for calculating tax relief in accordance with Directions – some discretion on establishing marginal rate
- For non-active members, arrears of contributions will be reduced by tax relief amount
- Provide for IDRPs if member disputes tax relief amount

Chapter 4: Interest and process

Section 26 PSPJOA 2022 allows for scheme regulations to be made to:

- Require payment of interest on relevant amounts (to and from the scheme)
- Determine the process for making payments (plus interest)

This could include:

- When and how amounts should be paid e.g. by instalments
- When amounts may only be paid on application
- Netting off of amounts owed to and from the scheme
- Rights of appeal

Under direction 13, scheme rules must operate in accordance with directions 14 (rates), 15 (periods) and 16 (other: inc. IDRPs)

14-15. Interest: rates and periods



Compensation (Part 4 tax losses)

- Calculated in line with [the Taxes \(Interest Rate\) Regulations 1989](#) as if amount were overpaid tax



Amounts due from member to scheme

- NS&I Equivalent Savings Rate
- From date overpaid benefits were paid to date of payment
- From date contributions due to date of payment
- Some discretion re: start date
- Compounded daily



Amounts due from scheme to member

- On certain amounts depending on timing: rate fixed by [Judgments Act 1838](#) – currently 8%
- From ‘mid-point’ to 28 days after RSS (conts/pension)
- From date of PCLS to 28 days after RSS
- Direct financial loss
- Simple interest



Amounts due from scheme to member

- On certain amounts depending on timing: NS&I Equivalent Savings Rate
- Compensation for contributions under DC election, from date due to date of payment
- Other conts/pension/ LS more than 28 days after RSS
- Compounded

NS&I Equivalent Savings Rate

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%

17-19. Process

Under direction 17, scheme rules must operate in accordance with directions 18 and 19

Application for compensation:

- Member must apply to scheme manager
- For Part 4 tax loss must include calc from HMRC (see [sect. 104 PSPJOA](#)) and signed declaration
- Scheme to determine amount with covering explanation
- Must provide for IDRP if member disputes amount

Netting off

- Where amounts (plus interest) are due to be paid at the same time, the scheme **may** determine that they are aggregated and the difference paid
- Must provide for IDRP if member disputes calculation

Chapter 5: Information

Section 29 PSPJOA 2022 deals with RSS and provides basic information about content and timescales. Section 29(6) allowed for additional requirements to be made via HMT Directions.

20. Remediable Service Statements

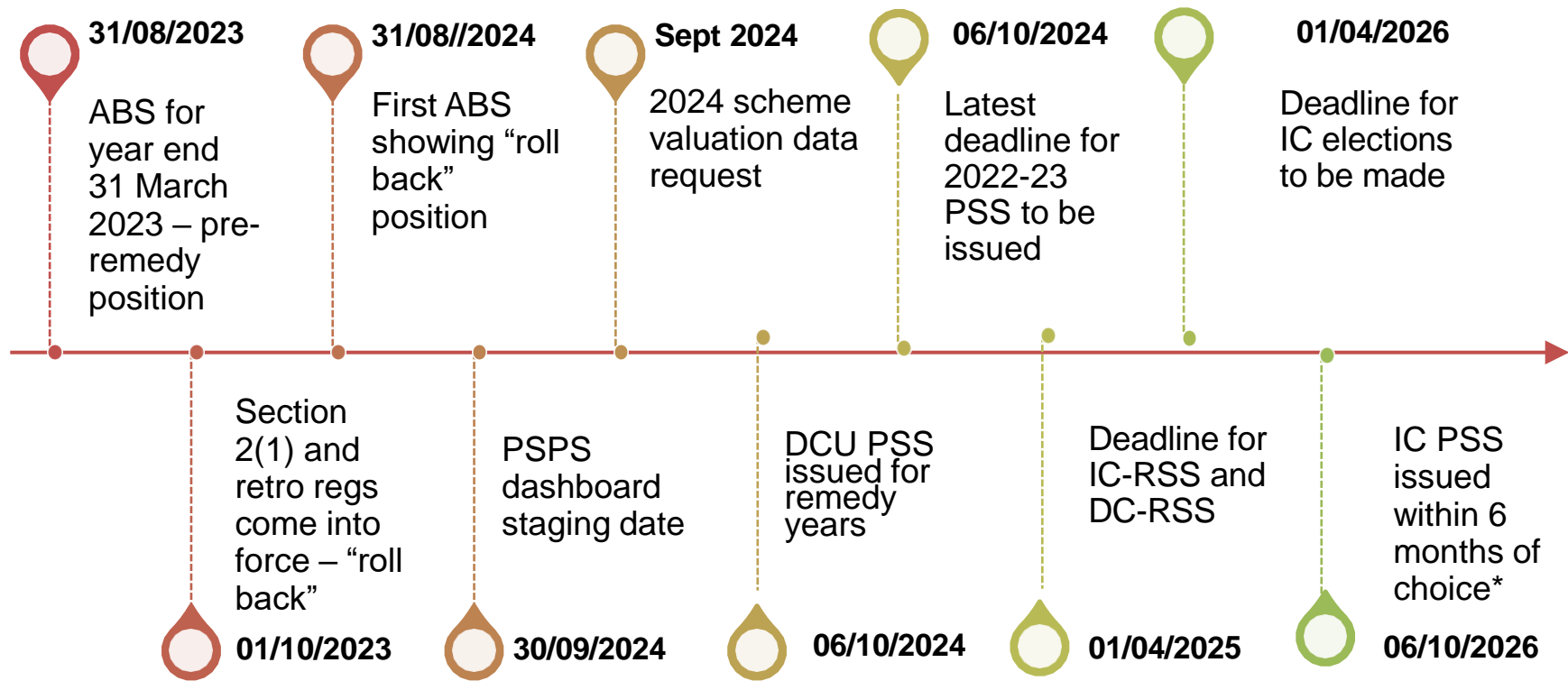
Direction 20(1) sets out that, in addition to the provisions of section 29(5), an RSS must include:

- Corrections to benefits, including interest and process
- Corrections to contributions, including interest and process
- Any changes as a result of treatment of voluntary contributions under section 20(1)
- Additional rights and options in relation to any TV out
- Any changes as a result of treatment of transfers in under section 21(1)(b) to (e)
- Explanation of revised tax liabilities
- Reference to PSS (if applicable) and signpost to further info
- Description of any other interest (e.g. on compensation)
- Provisions for CD under [section 5](#) (opted out service)
- Any specific information needed in respect of IHR
- Right of appeal (IDRP)

20. Remediable Service Statements #2

Direction 20(2) sets out that an RSS must be combined with an ABS, except for the first time one is issued

Statutory dates



* Or end of the election period (the rectification deadline)

Any questions



Disclaimer

- The information contained in these slides are the authors interpretation of the current regulations.
- Readers should take their own legal advice on the interpretation of any particular piece of legislation.
- No responsibility whatsoever will be assumed by LGA or their partners for any direct or consequential loss, financial or otherwise, damage or inconvenience, or any other obligation or liability incurred by readers relying on information contained in these slides.

Thank you for listening!

claire.hey@local.gov.uk

elena.johnson@local.gov.uk