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PRESIDENT
EMPLOYMENT TRIBUNALS
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**EMPLOYMENT TRIBUNALS
(SCOTLAND)**
Judge Shona Simon
President

Addendum to Presidential Guidance on Employment Tribunals: Principles for Compensating Pension Loss

This Addendum updates, but does not replace, the Presidential Guidance dated 10 August 2017 which introduced the fourth edition of the guidance for tribunals and parties on calculating compensation for pension loss (the document titled “Employment Tribunals: Principles for Compensating Pension Loss” - referred to as the “Principles”).

It does, however, replace the First Addendum of 7 November 2019 which introduced the first revision to the Fourth Edition. A significant feature of the first revision was the inclusion in Appendix 2 of extracts from the Ogden Tables at the new statutory discount rate of minus 0.25%. However, the Scottish Government has decided not to adopt that new discount rate but to retain the previous rate of minus 0.75%. In order to ensure that the Principles remain fully valid in Scotland the working group has now produced a second revision in which Appendix 2 also provides tables at the minus 0.75% rate.

The revised document is available at these locations:

<https://www.judiciary.uk/publications/employment-rules-and-legislation-practice-directions/> (for England and Wales)

<https://www.judiciary.uk/publications/directions-for-employment-tribunals-scotland/> (for Scotland)

Tribunals and users should now refer to the second revision rather than to the original fourth edition.

The main changes to the original fourth edition are as follows:

- The change to the statutory discount rate in August 2019 (from - 0.75% to - 0.25%) in England and Wales has been reflected in the text and in the relevant worked examples in Appendix 3. The retention in Scotland of the - 0.75% discount rate is also reflected in the text and one example in Appendix 3.
- References to rates of tax and of state pension have also been updated to current figures in the text and in Appendix 3.

- The approach to claims for compensation for loss of state pension rights has been modified to take account of national insurance credits. The circumstances in which such an award may be appropriate are limited.
- The methodology for grossing-up over more than one tax band has been refined and the relevant worked examples modified accordingly. Appendix 3 now begins with a note on grossing-up.
- The explanatory notes about public sector pension schemes in Appendix 1 now cover the Universities Superannuation Scheme.
- The extracts from the Ogden tables found in Appendix 2 have been refined and updated. They incorporate tables at the new discount rate for England and Wales as well as tables applicable in Scotland. In addition, the tables now provide figures for each retirement age from 55 to 75, which should remove the need for interpolation calculations. Finally, as explained in paragraph 5.53(f) of the Principles, the tables for pension loss have been adjusted to recognise the greater life expectancy of members of occupational pension schemes.

These revisions in part reflect contributions from beyond the working group, and those who have contributed are acknowledged in Appendix 5. As ever, the working group welcomes further comments and contributions via the email address which appears in paragraph 1.13 of the Principles.

The Presidents expect that Employment Tribunals will have regard to the current version of the Principles when calculating compensation for pension loss.



Judge Shona Simon
President (Scotland)



Judge Barry Clarke
President (England & Wales)

12 March 2021