

The Eighth Edition of the Ogden Tables

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The long-awaited 8th edition of the Ogden Tables were published by the Government's Actuary Department on 17th July 2020, nine years after the 7th edition in 2011.

The latest version sees a number of important changes. The explanatory notes have been completely rewritten and expanded to cover pension loss claims and periodical payment orders. This article highlights the main differences, but I urge everyone to read the explanatory notes.

Multipliers

The update comes following the publication by the ONS of the National Life Statistics for 2016 – 2018 in October 2019. This highlighted that life expectancy was not improving as quickly as anticipated in 2008. The multipliers in the 8th edition are based on mortality rates from 2018-based projections. The ONS mortality rate shows that male and female life expectancy has been increasing at a slower rate than predicted and as a consequence the lifetime multipliers have reduced, more so for women and older Claimants. The most significant change is around the age of 60-70 in males. For females there are greater reductions with a steady decline over their lifetime. For younger Claimants, the reduction is between 1-3%, whereas older Claimant's have seen a reduction in predicted life expectancy by as much as 8-9%.

For example, a 73-year-old female's Ogden 7 life multiplier, at -0.25% rate of return was 17.35, whereas in Ogden 8 it is 15.75, a reduction of 9.22%.

The assumptions do not take into account the effect, if any, of the Covid-19 pandemic on future mortality. The technical note prepared by the Government Actuary's Department points out that the full impact of the pandemic is not known and will remain uncertain until further evidence has been established. Whilst the pandemic is likely to have an effect on mortality in the short term, it does not necessarily follow that there will be a long-term effect on mortality rates.

A comparison of Tables 1 and 2 multipliers produced by the seventh and eighth editions of the tables reveal that there is a general reduction in multipliers at all ages. However, earning multipliers have slightly increased.

The Tables

There are now 36, rather than 28 tables. Helpfully the 8th Edition now provides for a wider range of retirement ages. Four new tables are provided for men and women to a retirement age 68, to reflect the current state pension and pension losses from the same age. Old Table 27 (discount factors for term certain) and 28 (multipliers for pecuniary loss for term certain) are now Tables 35 and 36, respectively.

A further welcome addition to the 8th Edition are the Additional Tables, in excel format, which provide a helpful way of calculating multipliers from any age at trial to future age at discount rates of the jurisdictions of England and Wales, Scotland and Northern Ireland respectively. These tables will assist in calculating split multipliers or where the Claimant has an unusual retirement age. The introduction to these additional tables makes clear that the tables will usually provide more accurate results than methods previously used. The additional tables are available on the government website.

<https://www.gov.uk/government/publications/ogden-tables-actuarial-compensation-tables-for-injury-and-death>.

Section B

Perhaps the most significant difference between the 7th and 8th Edition is Section B and the explanatory notes relating to contingencies other than mortality. This section has been completely revised. This is, in my view, a welcome revision. There are amendments to the discount factors in Tables A to D. Of note:

- the Explanatory notes state that the methodology for calculating future loss of earnings using the reduction factors in Tables A-D will apply in the majority of cases. Alternative approaches, i.e. Smith or Blamire award might apply “where there is insufficient evidence or too many imponderables for the judge to be able to make the findings necessary to support the conventional multiplicand/multiplier approach”, but it is made clear that uncertainties about the future do not of themselves justify departing from the conventional methodology, and the alternative approaches should be a last resort.
- One of the three limbs to be satisfied in respect of disability has changed. In Ogden 8 a Claimant has to be classified as disabled under the more restrictive and more stringent approach to classifying ‘disability’ as defined in the Disability Discrimination Act 1995 rather than under the Equality Act 2010 definition. The difference is:

Ogden 7: Equality Act 2010 definition - "that the impact of the disability substantially limits the person's ability to carry out normal day to day activities and their condition affects either the kind or the amount of paid work they can do";

Ogden 8: The Disability Discrimination Act 1995 definition - "the impact of the disability has a substantial adverse effect on the person's ability to carry out normal day-to-day activities and the effects of the impairment limit either the kind or the amount of paid work he/she can do". The Definition under the DDA draws a distinction between impairment and disability. Only the latter relates to employment.

- The education classification has been amended to a more helpful re-classification. The previous academic achievement categories of D, GE-A and O have been replaced with Level 3, 2 and 1 respectively. These levels reflect the much wider range of qualifications now available. In respect of any existing claim it is unlikely that this re-classification will have any substantive effect on the appropriate Reduction Factor of itself.
- There is new detailed guidance on when it may be appropriate to depart from the suggested Reduction Factors as set out in Tables A to D and, if so, the size of any adjustment. It is also made clear that disability status is not dependent on severity; as long as the Claimant meets the Ogden definition of disability, a departure on the basis of a perceived mild impairment/activity-limitation might not be appropriate. Any adjustment to the reduction factors should be modest. The notes specifically advise that interpolation using a mid-point between the disabled and non-disabled reduction factors (the approach adopted in *Conner v Bradman* [2007] EWHC 2789 (QB)) is inappropriate. It will be interesting to see how these new Edition will be applied.

Section C

Section C (Pension Loss) has been updated to reflect the changes in the pension legislation. Guidance is also provided as to what can and cannot be offset against a pension award and include simplified examples for dealing with pension contribution losses.

Section E

There is also a new Section E dealing with the indexation of loss of earnings periodical payment orders. This, of course, is not anything new, and parties have always been able to

seek PPO's in respect of future earnings but this section seems to encourage parties to use PPO's and refers to them being the 'safest means' to track future earnings growth.

In summary, given the changes between Ogden 8 and 7, it is recommended that Part 36 offers are reviewed, especially in cases where the Claimant is older and a female. It may also be wise to review those offers in respect of a Claimant who suffers from only a minor disability such that they may, no longer, qualify as Ogden Disabled. In the majority of cases, the impact of 8th Edition of Ogden Tables will be modest, but there may be some cases where existing offers may need to be withdrawn or changed.

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