



Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019

2019 asp 4

PART 2

PERIODICAL PAYMENTS OF DAMAGES

3 Award, continuity and index-linking

(1) In section 2 of the Damages Act 1996—

(a) after subsection (A1) there is inserted—

“(A2) A court awarding damages for future pecuniary loss in respect of personal injury—

(a) must—

(i) consider whether to make an order under which those damages wholly or partly take the form of periodical payments, and

(ii) have special regard to the pursuer’s needs and preferences when doing so, and

(b) may make such an order with or without the consent of the parties.”

(b) in subsection (1), for the words “in an action for personal injury” there is substituted “in respect of personal injury (other than damages for future pecuniary loss)”

(c) after subsection (1) there is inserted—

“(1A) A court may not make an order for periodical payments unless it is satisfied that the continuity of payment under the order is reasonably secure.

(1B) When a court makes an order for periodical payments, it must state why it is satisfied that the continuity of payment under the order is reasonably secure.”

and the title of the section becomes “Periodical payment orders”.

(2) After section 2B of the Damages Act 1996 there is inserted—

“2C Secure continuity of periodical payments

- (1) For the purpose of section 2(1A), a court is to assume that the continuity of payment under an order is reasonably secure if—
- (a) the right to receive the payments would be protected by—
 - (i) a guarantee under section 6 or Schedule 1, or
 - (ii) a scheme under section 213 of the Financial Services and Markets Act 2000 (whether or not as modified by section 4 of this Act), or
 - (b) the source of payment would be a recognised body or office-holder listed in subsection (6).
- (2) In an order for periodical payments, a court may include provision—
- (a) specifying the method by which the payments are to be made,
 - (b) requiring the person responsible for making the payments to take specified action to secure the continuity of payment, where the continuity of payment is not considered by the court to be reasonably secure by virtue of subsection (1),
 - (c) enabling an application to be made to the court for variation of provision included in the order under paragraph (a) or (b).
- (3) Despite inclusion in an order for periodical payments of provision of the kind mentioned in subsection (2)(a), the payments may be made by a different method if under the different method—
- (a) the right to receive the payments is protected in one of the ways mentioned in subsection (1)(a), or
 - (b) the source of payment is a recognised body or office-holder listed in subsection (6).
- (4) The court may vary the order in respect of provision of the kind mentioned in subsection (2)(a) or (b) but only if—
- (a) an application is made to the court in accordance with provision included in the order under subsection (2)(c), and
 - (b) the court is satisfied that the continuity of payment under the order is still reasonably secure (with subsection (1) to be used for this too).
- (5) As regards cases involving future pecuniary loss, subsection (4)(a) does not prevent variation of the order under section 2F(2)(a)(v) (which is about method of payment).
- (6) This is the list of who is a recognised body or office-holder as referred to in subsections (1)(b) and (3)(b)—
- (a) a part of the Scottish Administration,
 - (b) each of—
 - (i) a Minister of the Crown,
 - (ii) a department of the Government of the United Kingdom.
- (7) The Scottish Ministers may by regulations—

Status: This is the original version (as it was originally enacted).

- (a) add an entry to the list in subsection (6) so as to include a particular, or category of—
 - (i) health service body,
 - (ii) non-government body,
 - (b) provide for an exception to an entry originally contained in the list in subsection (6) (or remove or modify such an exception provided for in the list).
- (8) Regulations under subsection (7)—
- (a) may remove an entry added to the list,
 - (b) may not remove an entry originally contained in the list.
- (9) Regulations under subsection (7) are subject to the negative procedure.

2D Index-linking of amount of periodical payments

- (1) Deemed to be incorporated in an order for periodical payments is provision that the amount of the payments is to alter—
- (a) at such times and in such manner as set by or determined under rules of court, and
 - (b) on the statutory basis applying in the case.
- (2) Subsection (1) does not apply in relation to an order made before the day on which section 3 of the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019 comes into force.
- (3) Provision deemed by subsection (1)(a) and (b) to be incorporated in an order may be modified by the court which makes the order.
- (4) Provision deemed by subsection (1)(b) to be incorporated in an order may be replaced by the court which makes the order, by including provision in the order—
- (a) for the alternative basis of alteration that is to apply in the case, or
 - (b) for there to be no alteration in the case.
- (5) Provision of the kind mentioned in subsection (4)(a) may specify different bases for different circumstances.
- (6) The statutory basis of alteration as mentioned in subsection (1)(b) is alteration by reference to, whether indicating an upward or downward trend—
- (a) the retail prices index within the meaning of section 833(2) of the Income and Corporation Taxes Act 1988, or
 - (b) some published information relating to costs, earnings or other monetary factors as is, for use instead of the retail prices index, prescribed in regulations made by the Scottish Ministers.
- (7) Regulations under subsection (6)(b)—
- (a) may make different provision for different circumstances,
 - (b) are subject to the affirmative procedure.”.