

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019, Section 4. (See end of Document for details)



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

2019 asp 4

PART 2

PERIODICAL PAYMENTS OF DAMAGES

PROSPECTIVE

4 Variation or suspension of settlement

After section 2D of the Damages Act 1996 (see section 3 of this Act) there is inserted—

“2E Variation or suspension of future pecuniary loss award

- (1) In an order under which damages for future pecuniary loss are wholly or partly to take the form of periodical payments, a court may include provision enabling an application to be made to the court for (either or both)—
 - (a) variation of the order in accordance with section 2F, or
 - (b) suspension of the right to receive payments under the order in accordance with section 2G.
- (2) A court may include provision of the kind described in subsection (1) in an order only if it is satisfied that—
 - (a) there is a chance of a change in the pursuer's physical or mental condition occurring at some definite or indefinite point in the future, and
 - (b) should the change occur, the pursuer would be significantly over- or under-compensated by the damages being awarded for future pecuniary loss.
- (3) In an order including provision of the kind described in subsection (1), a court—

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- (a) must specify the sort of change in the pursuer's physical or mental condition which must occur before an application may be made for—
 - (i) variation of the order, or
 - (ii) suspension of the right to receive payments under the order,
 and
- (b) may specify a period within which any such application must be made (either generally or in respect of a specified sort of change in the pursuer's condition).

2F Variation of court-ordered periodical payments

- (1) A court which has made an order under which damages for future pecuniary loss are wholly or partly to take the form of periodical payments may vary the order.
- (2) In varying the order, the court may—
 - (a) alter the terms on which periodical payments in respect of future pecuniary loss are to be paid, in particular—
 - (i) the amount that is to be paid as a periodical payment,
 - (ii) the basis (if any) on which the amount of the payments is to adjust to reflect inflation,
 - (iii) the frequency of the payments,
 - (iv) the period during which the payments are to be made,
 - (v) the method by which the payments are to be made,
 - (b) award a lump sum instead of, or in addition to, any future periodical payments in respect of future pecuniary loss.
- (3) The court may vary the order only if—
 - (a) the order includes provision under section 2E(1) enabling an application to be made for its variation, and
 - (b) it is satisfied that—
 - (i) since the order was made, a change has occurred in the physical or mental condition of the injured person which is of a sort specified in the order in accordance with section 2E(3)(a), and
 - (ii) as a result of the change, the damages awarded for future pecuniary loss will significantly over- or under-compensate the injured person unless the order is varied.
- (4) The court may vary the order only if it is satisfied that the continuity of payment under the order is still reasonably secure (with section 2C(1) to be used for this too).
- (5) Ordinarily, the court may not vary the order—
 - (a) where a period within which an application for variation may be made is specified in the order, on an application made outwith that period,
 - (b) more than once in respect of each sort of change specified in the order in accordance with section 2E(3)(a).
- (6) But the court may—

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- (a) allow a late application on cause shown by reference to delay in information becoming known to the applicant if it is satisfied that the delay is not attributable to something which the applicant unreasonably failed to do,
 - (b) vary the order despite subsection (5)(a) or (b) if it is satisfied that there are exceptional circumstances justifying doing so.
- (7) A reference in this section to the injured person is to the person who suffered the injury in respect of which the order has been made.

2G Suspension of court-ordered periodical payments

- (1) A court which has made an order under which damages for future pecuniary loss are wholly or partly to take the form of periodical payments may suspend the right to receive payments under the order.
- (2) The court may suspend the right to receive the payments only if—
- (a) the order includes provision under section 2E(1) enabling an application to be made for suspension of the right to receive the payments, and
 - (b) it is satisfied that—
 - (i) since the order was made, a change has occurred in the physical or mental condition of the injured person which is of a sort specified in the order in accordance with section 2E(3)(a), and
 - (ii) as a result of the change, the damages awarded for future pecuniary loss will significantly over-compensate the injured person unless the right to receive the payments is suspended.
- (3) Where a period within which an application for suspension may be made is specified in the order, ordinarily the court may not suspend the right to receive the payments on an application made outwith that period.
- (4) But the court may—
- (a) allow a late application on cause shown by reference to delay in information becoming known to the applicant if it is satisfied that the delay is not attributable to something which the applicant unreasonably failed to do,
 - (b) suspend the right to receive the payments despite subsection (3) if it is satisfied that there are exceptional circumstances justifying doing so.
- (5) A reference in this section to the injured person is to the person who suffered the injury in respect of which the order has been made.

2H Variation or suspension of agreed periodical payments

- (1) A court may vary an agreement to which subsection (2) applies, or suspend a right to receive periodical payments under such an agreement, in accordance with—
- (a) this section, and
 - (b) any restrictions on the court's power to do so specified in the agreement.

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- (2) This subsection applies to an agreement which—
- (a) has been made to settle a claim or action for damages in respect of personal injury, and
 - (b) provides—
 - (i) for the agreed damages attributed to future pecuniary loss to take wholly or partly the form of periodical payments, and
 - (ii) that an application may be made to the court under this subsection in the event that at some definite or indefinite point in the future a change of a sort specified in the agreement occurs in the physical or mental condition of the injured person.
- (3) If the court is satisfied that the test in subsection (5) is met, it may—
- (a) vary the agreement by altering the terms relating to payments for future pecuniary loss, or
 - (b) suspend the right to receive payments for future pecuniary loss under the agreement.
- (4) In varying the agreement under subsection (3)(a), the court may—
- (a) alter the terms on which periodical payments for future pecuniary loss are to be paid, in particular—
 - (i) the amount that is to be paid as a periodical payment,
 - (ii) the basis (if any) on which the amount of the payments is to adjust to reflect inflation,
 - (iii) the frequency of the payments,
 - (iv) the period during which the payments are to be made,
 - (v) the method by which the payments are to be made,
 - (b) award a lump sum instead of, or in addition to, any future periodical payments in respect of future pecuniary loss.
- (5) The test for the purpose of subsection (3) is that—
- (a) since the agreement was made, a change has occurred in the physical or mental condition of the injured person which is of a sort specified in the agreement as envisaged by subsection (2)(b)(ii), and
 - (b) as a result of the change, the damages agreed for future pecuniary loss will significantly over- or under-compensate the injured person unless—
 - (i) the agreement is varied, or
 - (ii) the right to receive payments for future pecuniary loss under the agreement is suspended.
- (6) A reference in this section to the injured person is to the person who suffered the injury in respect of which the agreement has been made.

2I Lifting of suspension of periodical payments

- (1) A court which has suspended a person's right to receive periodical payments under section 2G or 2H may lift the suspension if it is satisfied that—

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- (a) there has been a change in the physical or mental condition of the injured person since the right to receive the payments was suspended, and
 - (b) the injured person will be significantly under-compensated unless the suspension is lifted.
- (2) A reference in this section to the injured person is to the person who suffered the injury in respect of which the order or (as the case be) the agreement in question has been made.”.

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