

Draft Regulations laid before the Scottish Parliament under paragraph 31(2) of schedule B1 of the Damages Act 1996 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2024 No.

DAMAGES

The Damages (Review of Rate of Return) (Scotland) Regulations 2024

Made - - - - 2024
Coming into force - - 1st July 2024

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 8, 9(2)(b) and 11(1) of schedule B1 of the Damages Act 1996⁽¹⁾ and all other powers enabling them to do so.

In accordance with paragraph 31(2) of schedule B1 of the Damages Act 1996 a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Damages (Review of Rate of Return) (Scotland) Regulations 2024 and come into force on 1 July 2024.

Alteration of notional investment period and standard adjustments

2.—(1) Schedule B1 of the Damages Act 1996 is modified as follows.

(2) In paragraph 7(2)(b), for “30” substitute “43”.

(3) In paragraph 10(2)(a), for “0.75 of a percentage point” substitute “1.25 percentage points”.

Allowance for impact of inflation

3.—(1) Average Weekly Earnings is prescribed as the published information for use instead of the retail prices index for the purposes of paragraph 9(2) of schedule B1 of the Damages Act 1996.

(2) In paragraph (1), “Average Weekly Earnings” means the measure of short-term average earnings used to measure changes in earnings over time—

(1) 1996 c. 48; schedule B1 was added by section 2(2) of the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019 (asp 4).

- (a) published periodically by the Statistics Board⁽²⁾ under the title “Average weekly earnings in Great Britain”⁽³⁾,
- (b) based on that body’s Monthly Wages and Salaries Survey⁽⁴⁾, and
- (c) which relates to the whole of the economy of Great Britain.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(2) The Statistics Board was established by section 1(1) of the Statistics and Registration Service Act 2007 (c. 18).
(3) The relevant bulletin is made available each month on the following webpage: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours>.
(4) The Monthly Wages and Salaries Survey is conducted under the Statistics of Trade Act 1947 (c. 39).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations alter some of the parameters which are to be used by the official rate-assessor in setting the rate of return for the purposes of section B1(1) of the Damages Act 1996. That rate is known as the Personal Injury Discount Rate and is used in the calculation of awards of damages for future pecuniary loss in actions for personal injury. In terms of schedule B1 of that Act, the rate is to be set so as to reflect the return which a hypothetical investor could reasonably be expected to achieve if investing in a notional investment portfolio over a notional period, subject to a number of standard adjustments.

Regulation 2(2) increases (from 30 to 43 years) that notional period.

Regulation 2(3) increases (from 0.75 to 1.25) the number of percentage points which are, as a standard adjustment, to be deducted to represent the impact of taxation and the cost of investment advice and management.

Regulation 3 changes the basis upon which the rate-assessor is to make allowance for the impact of inflation. It prescribes published information to be used instead of referring to the retail prices index. The information is known as “Average Weekly Earnings” and is used to measure changes in earnings over time. It is a series of statistics designated by the Statistics Board as “National Statistics” in accordance with section 12 of the Statistics and Registration Service Act 2007. It is published by the Statistics Board (operating through the Office of National Statistics (ONS)) in a monthly statistical bulletin entitled “Average weekly earnings in Great Britain” which is available at the ONS website (www.ons.gov.uk). It is based on information on wages and salaries from businesses in Great Britain, obtained through the Monthly Wages and Salaries Survey conducted by ONS.

A Business and Regulatory Impact Assessment has been prepared and is available online at www.legislation.gov.uk.