



Civil Liability Act 2018

2018 CHAPTER 29

PART 2

PERSONAL INJURY DISCOUNT RATE

10 Assumed rate of return on investment of damages

- (1) Before section 1 of the Damages Act 1996 (assumed rate of return on investment of damages) insert—

“A1 Assumed rate of return on investment of damages: England and Wales

- (1) In determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury the court must, subject to and in accordance with rules of court made for the purposes of this section, take into account such rate of return (if any) as may from time to time be prescribed by an order made by the Lord Chancellor.
- (2) Subsection (1) does not however prevent the court taking a different rate of return into account if any party to the proceedings shows that it is more appropriate in the case in question.
- (3) An order under subsection (1) may prescribe different rates of return for different classes of case.
- (4) An order under subsection (1) may in particular distinguish between classes of case by reference to—
 - (a) the description of future pecuniary loss involved;
 - (b) the length of the period during which future pecuniary loss is expected to occur;
 - (c) the time when future pecuniary loss is expected to occur.
- (5) Schedule A1 (which makes provision about determining the rate of return to be prescribed by an order under subsection (1)) has effect.

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(6) An order under this section is to be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

(2) Before the Schedule to the Damages Act 1996 insert—

“SCHEDULE A1

ASSUMED RATE OF RETURN ON INVESTMENT
OF DAMAGES: ENGLAND AND WALES

Periodic reviews of the rate of return

- 1 (1) The Lord Chancellor must review the rate of return periodically in accordance with this paragraph.
- (2) The first review of the rate of return must be started within the 90 day period following commencement.
- (3) Each subsequent review of the rate of return must be started within the 5 year period following the last review.
- (4) It is for the Lord Chancellor to decide—
 - (a) when, within the 90 day period following commencement, a review under sub-paragraph (2) is to be started;
 - (b) when, within the 5 year period following the last review, a review under sub-paragraph (3) is to be started.
- (5) In this paragraph—

“90 day period following commencement” means the period of 90 days beginning with the day on which this paragraph comes into force;

“5 year period following the last review” means the period of five years beginning with the day on which the last review under this paragraph (whether under sub-paragraph (2) or (3)) is concluded.
- (6) For the purposes of this paragraph a review is concluded on the day when the Lord Chancellor makes a determination under paragraph 2 or 3 (as the case may be) as a result of the review.

Conducting the first review

- 2 (1) This paragraph applies when the Lord Chancellor is required by paragraph 1(2) to conduct a review of the rate of return.
- (2) The Lord Chancellor must review the rate of return and determine whether it should be—
 - (a) changed to a different rate, or
 - (b) kept unchanged.
- (3) The Lord Chancellor must conduct that review and make that determination within the 140 day review period.
- (4) In conducting the review, the Lord Chancellor must consult—
 - (a) the Government Actuary, and

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- (b) the Treasury.
- (5) The consultation of the Government Actuary must start within the period of 20 days beginning with the day on which the 140 day review period starts.
- (6) The Government Actuary must respond to the consultation within the period of 80 days beginning with the day on which the Government Actuary's response to the consultation is requested.
- (7) The exercise of the power of the Lord Chancellor under this paragraph to determine whether the rate of return should be changed or kept unchanged is subject to paragraph 4.
- (8) When deciding what response to give to the Lord Chancellor under this paragraph, the Government Actuary and the Treasury must take into account the duties imposed on the Lord Chancellor by paragraph 4.
- (9) During any period when the office of Government Actuary is vacant, a reference in this paragraph to the Government Actuary is to be read as a reference to the Deputy Government Actuary.
- (10) In this paragraph “140 day review period” means the period of 140 days beginning with the day which the Lord Chancellor decides (under paragraph 1) should be the day on which the review is to start.

Conducting later reviews

- 3 (1) This paragraph applies whenever the Lord Chancellor is required by paragraph 1(3) to conduct a review of the rate of return.
- (2) The Lord Chancellor must review the rate of return and determine whether it should be—
 - (a) changed to a different rate, or
 - (b) kept unchanged.
- (3) The Lord Chancellor must conduct that review and make that determination within the 180 day review period.
- (4) In conducting the review, the Lord Chancellor must consult—
 - (a) the expert panel established for the review, and
 - (b) the Treasury.
- (5) The expert panel must respond to the consultation within the period of 90 days beginning with the day on which its response to the consultation is requested.
- (6) The exercise of the power of the Lord Chancellor under this paragraph to determine whether the rate of return should be changed or kept unchanged is subject to paragraph 4.
- (7) When deciding what response to give to the Lord Chancellor under this paragraph, the expert panel and the Treasury must take into account the duties imposed on the Lord Chancellor by paragraph 4.
- (8) In this paragraph “180 day review period” means the period of 180 days beginning with the day which the Lord Chancellor decides (under paragraph 1) should be the day on which the review is to start.

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Determining the rate of return

- 4 (1) The Lord Chancellor must comply with this paragraph when determining under paragraph 2 or 3 whether the rate of return should be changed or kept unchanged (“the rate determination”).
- (2) The Lord Chancellor must make the rate determination on the basis that the rate of return should be the rate that, in the opinion of the Lord Chancellor, a recipient of relevant damages could reasonably be expected to achieve if the recipient invested the relevant damages for the purpose of securing that—
- (a) the relevant damages would meet the losses and costs for which they are awarded;
 - (b) the relevant damages would meet those losses and costs at the time or times when they fall to be met by the relevant damages; and
 - (c) the relevant damages would be exhausted at the end of the period for which they are awarded.
- (3) In making the rate determination as required by sub-paragraph (2), the Lord Chancellor must make the following assumptions—
- (a) the assumption that the relevant damages are payable in a lump sum (rather than under an order for periodical payments);
 - (b) the assumption that the recipient of the relevant damages is properly advised on the investment of the relevant damages;
 - (c) the assumption that the recipient of the relevant damages invests the relevant damages in a diversified portfolio of investments;
 - (d) the assumption that the relevant damages are invested using an approach that involves—
 - (i) more risk than a very low level of risk, but
 - (ii) less risk than would ordinarily be accepted by a prudent and properly advised individual investor who has different financial aims.
- (4) That does not limit the assumptions which the Lord Chancellor may make.
- (5) In making the rate determination as required by sub-paragraph (2), the Lord Chancellor must—
- (a) have regard to the actual returns that are available to investors;
 - (b) have regard to the actual investments made by investors of relevant damages; and
 - (c) make such allowances for taxation, inflation and investment management costs as the Lord Chancellor thinks appropriate.
- (6) That does not limit the factors which may inform the Lord Chancellor when making the rate determination.
- (7) In this paragraph “relevant damages” means a sum awarded as damages for future pecuniary loss in an action for personal injury.

Determination

- 5 When the Lord Chancellor makes a rate determination, the Lord Chancellor must—

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- (a) give reasons for the rate determination made, and
- (b) publish such information as the Lord Chancellor thinks appropriate about—
 - (i) the response of the expert panel established for the review, or
 - (ii) in the case of a review required by paragraph 1(2), the response of the Government Actuary or the Deputy Government Actuary (as the case may be).

Expert panel

- 6 (1) For each review of a rate of return required by paragraph 1(3), the Lord Chancellor is to establish a panel (referred to in this Schedule as an “expert panel”) consisting of—
 - (a) the Government Actuary, who is to chair the panel; and
 - (b) four other members appointed by the Lord Chancellor.
- (2) The Lord Chancellor must exercise the power to appoint the appointed members to secure that—
 - (a) one appointed member has experience as an actuary;
 - (b) one appointed member has experience of managing investments;
 - (c) one appointed member has experience as an economist;
 - (d) one appointed member has experience in consumer matters as relating to investments.
- (3) An expert panel established for a review of a rate of return ceases to exist once it has responded to the consultation relating to the review.
- (4) A person may be a member of more than one expert panel at any one time.
- (5) A person may not become an appointed member if the person is ineligible for membership.
- (6) A person who is an appointed member ceases to be a member if the person becomes ineligible for membership.
- (7) The Lord Chancellor may end an appointed member's membership of the panel if the Lord Chancellor is satisfied that—
 - (a) the person is unable or unwilling to take part in the panel's activities on a review conducted under paragraph 1;
 - (b) it is no longer appropriate for the person to be a member of the panel because of gross misconduct or impropriety;
 - (c) the person has become bankrupt, a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of the person, the person's estate has been sequestrated or the person has made an arrangement with or granted a trust deed for creditors.
- (8) During any period when the office of Government Actuary is vacant the Deputy Government Actuary is to be a member of the panel and is to chair it.
- (9) A person is “ineligible for membership” of an expert panel if the person is—
 - (a) a Minister of the Crown, or

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- (b) a person serving in a government department in employment in respect of which remuneration is payable out of money provided by Parliament.

- (10) In this paragraph “appointed member” means a person appointed by the Lord Chancellor to be a member of an expert panel.

Proceedings, powers and funding of an expert panel

- 7 (1) The quorum of an expert panel is four members, one of whom must be the Government Actuary (or the Deputy Government Actuary when the office of Government Actuary is vacant).
- (2) In the event of a tied vote on any decision, the person chairing the panel is to have a second casting vote.
- (3) The panel may—
 - (a) invite other persons to attend, or to attend and speak at, any meeting of the panel;
 - (b) when exercising any function, take into account information submitted by, or obtained from, any other person (whether or not the production of the information has been commissioned by the panel).
- (4) The Lord Chancellor must make arrangements for an expert panel to be provided with the resources which the Lord Chancellor considers to be appropriate for the panel to exercise its functions.
- (5) The Government Actuary's Department, or any other government department, may enter into arrangements made by the Lord Chancellor under subparagraph (4).
- (6) The Lord Chancellor must make arrangements for the appointed members of an expert panel to be paid any remuneration and expenses which the Lord Chancellor considers to be appropriate.

Application of this Schedule where there are several rates of return

- 8 (1) This paragraph applies if two or more rates of return are prescribed under section A1.
- (2) The requirements—
 - (a) under paragraph 1 for a review to be conducted, and
 - (b) under paragraph 2 or 3 relating to how a review is conducted,
 apply separately in relation to each rate of return.
- (3) As respects a review relating to a particular rate of return, a reference in this Schedule to the last review conducted under a particular provision is to be read as a reference to the last review relating to that rate of return.

Interpretation

- 9 (1) In this Schedule—
 - “expert panel” means a panel established in accordance with paragraph 6;

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“rate determination” has the meaning given by paragraph 4;
“rate of return” means a rate of return for the purposes of section A1.

- (2) A provision of this Schedule that refers to the rate of return being changed is to be read as also referring to—
- (a) the existing rate of return being replaced with no rate;
 - (b) a rate of return being introduced where there is no existing rate;
 - (c) the existing rate of return for a particular class of case being replaced with no rate;
 - (d) a rate of return being introduced for a particular class of case for which there is no existing rate.
- (3) A provision of this Schedule that refers to the rate of return being kept unchanged is to be read as also referring to—
- (a) the position that there is no rate of return being kept unchanged;
 - (b) the position that there is no rate of return for a particular class of case being kept unchanged.
- (4) A provision of this Schedule that refers to a review of the rate of return is to be read as also referring to—
- (a) a review of the position that no rate of return is prescribed;
 - (b) a review of the position that no rate of return is prescribed for a particular class of case.”
- (3) Any order made by the Lord Chancellor under section 1(1) of the Damages Act 1996 which relates to England and Wales and is in force immediately before the time when subsection (1) comes into force is to be treated after that time as if made by the Lord Chancellor under section A1(1) of that Act.
- (4) In consequence of the amendments made by subsections (1) and (2), the Damages Act 1996 is amended as follows—
- (a) section 1 is omitted;
 - (b) in section 2(4)(a), for “the Schedule” substitute “ Schedule 1 ”;
 - (c) in section 2(7)(b), for “the Schedule” substitute “ Schedule 1 ”;
 - (d) in section 6(9), for “The Schedule” substitute “ Schedule 1 ”;
 - (e) the existing Schedule becomes Schedule 1 (and, accordingly, for the heading “ Schedule ” substitute the heading “ Schedule 1 ”).

Changes to legislation:

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