



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

2019 asp 4

## PART 2

### PERIODICAL PAYMENTS OF DAMAGES

#### 5 Liability for bearing expenses in case

After section 2I of the Damages Act 1996 (see section 4 of this Act) there is inserted—

##### “2J Liability for bearing certain expenses

- (1) No court may make an award of expenses against the injured person in respect of any expenses which relate to—
  - (a) qualifying proceedings, or
  - (b) appeal proceedings.
- (2) The exception to this is where the injured person conducts the qualifying or (as the case may be) appeal proceedings otherwise than in an appropriate manner.
- (3) Qualifying proceedings are proceedings—
  - (a) by virtue of section 2C(4), as to variation of an order,
  - (b) by virtue of section 2F, as to variation of an order,
  - (c) by virtue of section 2G, as to suspension of a right in relation to an order,
  - (d) by virtue of section 2H as to variation of an agreement or as to suspension of a right in relation to an agreement, or
  - (e) by virtue of section 2I—
    - (i) as to lifting of a suspension of a right under section 2G in relation to an order, or
    - (ii) as to lifting of a suspension of a right under section 2H in relation to an agreement.
- (4) Appeal proceedings are proceedings in an appeal arising from qualifying proceedings.

- (5) In the case of qualifying proceedings or appeal proceedings concerning something sought in relation to an agreement, the rule and the exception in this section about an award of expenses are subject to any wholly or partly different provision in the agreement that governs the matter of who is to bear any expenses of the kind covered by this section.
- (6) In the case of qualifying proceedings or appeal proceedings concerning something sought in relation to an order, the rule in this section about an award of expenses is subject to any further exceptions specified in an act of sederunt as mentioned in section 8(6) of the Civil Litigation Act.
- (7) The issue of whether the injured person conducts qualifying proceedings or appeal proceedings in an appropriate manner is to be determined in accordance with section 8(4) and (5) of the Civil Litigation Act (with the references there to the claim or proceedings to be read in connection with this section as if to the qualifying or (as the case may be) appeal proceedings).
- (8) This section is without prejudice to section 8(1) to (3) of, together with section 8(4) to (7) of, the Civil Litigation Act.
- (9) In this section—
  - (a) a reference to the injured person—
    - (i) 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, but
    - (ii) includes someone representing or responsible for the interests of the injured person where the injured person is not a party in the qualifying or (as the case may be) appeal proceedings in the injured person's own name,
  - (b) “the Civil Litigation Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018.”.