

T: 0300 244 4000
E: scottish.ministers@gov.scot

Karen Adam, Convener,
Equalities, Human Rights and Civil Justice
Committee
The Scottish Parliament,
Edinburgh
EH99 1SP

By email to:
ehrcj.committee@parliament.scot

28 May 2024

Dear Convener,

THE DAMAGES (REVIEW OF RATE OF RETURN) (SCOTLAND) REGULATIONS 2024

Thank you for your letter of 22 May. I have provided below some further information regarding the consequences of the Damages (Review of Rate of Return) (Scotland) Regulations 2024 that I hope the Committee finds helpful.

It is important to recognise that the draft SSI before Parliament does not directly set the Personal Injury Discount Rate. The function of determining the rate sits with the Government Actuary as set out in schedule B1 of the Damages Act 1996. Instead the regulations amend some of the parameters within which the Government Actuary carries out their task.

As I mentioned to the Committee when I appeared on 21 May, it is only right that liable parties should have to pay full compensation to persons who have suffered injuries - including catastrophic injuries. This would be to adequately cover the cost of care etc. that they will need over the course of their life. To do otherwise would be wrong in principle, and would be a false economy: unfunded care costs would be met by our NHS and social care services.

The amendments made by the regulations are in line with independent professional advice that the Scottish Government commissioned, jointly with the Northern Ireland Executive, following a consultation exercise that received the views both of organisations representing those who have been injured in accidents and those representing the defenders and their insurers. The Central Legal Office of NHS Scotland were written to as part of the consultation exercise and no response was received.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

The discount rate applies to lump sum awards of damages but parties can already agree to the court making a periodical payment order. These are a means of reducing the uncertainty and the risk of over- or under-compensation. The Scottish Government is working with the Scottish Civil Justice Council on the preparation of any necessary rules of court that would allow a court to *impose* an order on parties in civil proceedings.

There is a statutory duty on the Government Actuary to review the rate beginning on 1 July. It is important that the review is able to proceed with amended parameters that reflect up-to-date evidence and current economic circumstances.

SIQBHIAN BROWN

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot

INVESTORS IN PEOPLE[™]
We invest in people Silver

