EXPLANATORY MEMORANDUM TO

The Damages (Process for Setting Rate of Return) Regulations (Northern Ireland) 2024

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice (the Department) to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under paragraphs 9(2)(b) and 11(1) of Schedule C1 to the Damages Act 1996 (the 1996 Act) and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. The Rule modifies two of the parameters of the statutory methodology, prescribed in the 1996 Act, to be used by the Government Actuary when setting the personal injury discount rate: firstly, it prescribes annual weekly earnings instead of the retail prices index as the measure by reference to which the impact of inflation is to be allowed for; and secondly, it changes the standard adjustment for the impact of taxation and the costs of investment advice and management from 0.75% to 1.25%.

3. Background

3.1. When a person suffers personal injuries caused by the negligence of another, they are entitled to be fully compensated by the negligent party – but no more and no less – for any future financial losses and expenses arising from the injury. This is the legal principle of 100% compensation.

3.2. Damages for future financial losses and expenses are usually paid as a lump sum that can be invested by the claimant and, therefore, earn a return pending its expenditure. The personal injury discount rate gives effect to the 100% compensation principle by making a percentage adjustment to a lump sum award of damages to reflect the expected return on investment.

3.3. The discount rate is set by the Government Actuary according to the methodology set out in Schedule C1 to the 1996 Act, which assumes investment of the lump sum in a low-risk mixed portfolio over a period of 43 years.

3.4. As prescribed in Schedule C1, the Government Actuary must start a review of the discount rate on 1 July 2024. Ahead of that review, the Department must ensure that the notional investment portfolio remains suitable for investment by the hypothetical claimant investor, having regard to the 100% compensation principle. The Department also has power to modify the other parameters.

4. Consultation

4.1. The Department wrote to stakeholders seeking views, supported by evidence, on the need or otherwise to adjust the parameters prescribed in

Schedule C1 to the 1996 Act for calculating the discount rate, or to require more than one rate to be set. The Department also commissioned advice from the Government Actuary's Department (GAD) on the same questions. The consultation responses were provided for GAD's information.

5. Equality Impact

5.1. The proposal to make regulations to modify the methodology by which the Government Actuary sets the discount rate has been screened for implications for equality of opportunity in compliance with section 75 of the Northern Ireland Act 1998. An equality impact assessment was considered unnecessary as the proposed changes will apply in the same way for all claimants for personal injury damages, regardless of s75 category. There is no adverse impact for any category of people. The Rule is a technical amendment, to reflect the expected rate of return on investment of a lump sum award of damages for future financial loss based on current economic projections, in order to give effect to the legal principle of 100% compensation.

6. Regulatory Impact

6.1. A regulatory impact assessment has not been carried out for this Rule. The amendments to two of the parameters which are to be applied by the Government Actuary when setting the discount rate do not arise from any change in policy, rather are to reflect the expected return on investment of a lump sum award of damages for future financial loss based on current economic projections. The purpose of applying the discount rate is to give effect to the legal principle of 100% compensation and therefore the impact on businesses etc cannot be taken into account in how the rate is set.

7. Financial Implications

7.1. The Rule is to ensure the discount rate reflects the expected return on investment of a lump sum award of damages for future financial loss based on current economic projections. This is to give effect to the legal principle of 100% compensation. In view of this, the financial implications for claimants or defendants cannot be taken into account when considering modifications to the methodology for setting the rate.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department is satisfied that no issues arise regarding section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Not applicable.

11. Additional Information

11.1. Not applicable.