



# Damages Act 1996

## 1996 CHAPTER 48

**U.K.**

An Act to make new provision in relation to damages for personal injury, including injury resulting in death. [24th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

**E1** Act extends to UK except s. 3 which extends to E.W. & N.I. only see [s. 8\(2\)](#)

### Commencement Information

**II** Act wholly in force at 24. 9. 1996 see [s. 8\(3\)](#)

## **1 Assumed rate of return on investment of damages.** **U.K.**

- (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 shall, 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) above shall 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) above may prescribe different rates of return for different classes of case.
- (4) Before making an order under subsection (1) above the Lord Chancellor shall consult the Government Actuary and the Treasury; and any order under that subsection shall

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be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F1</sup>(5) In the application of this section to Scotland—

- (a) for the reference to the Lord Chancellor in subsections (1) and (4) there is substituted a reference to the Scottish Ministers; and
- (b) in subsection (4)—
  - (i) “and the Treasury” is omitted; and
  - (ii) for “either House of Parliament” there is substituted “the Scottish Parliament”.]

#### Textual Amendments

**F1** S. 1(5) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, Sch. 2 Pt. I para. 126(2)(3)

## 2 Consent orders for periodical payments. **U.K.**

- (1) A court awarding damages in an action for personal injury may, with the consent of the parties, make an order under which the damages are wholly or partly to take the form of periodical payments.
- (2) In this section “damages” includes an interim payment which the court, by virtue of rules of court in that behalf, orders the defendant to make to the plaintiff (or, in the application of this section to Scotland, the defender to make to the pursuer).
- (3) This section is without prejudice to any powers exercisable apart from this section.

## 3 Provisional damages and fatal accident claims. **E+W+N.I.**

- (1) This section applies where a person—
  - (a) is awarded provisional damages; and
  - (b) subsequently dies as a result of the act or omission which gave rise to the cause of action for which the damages were awarded.
- (2) The award of the provisional damages shall not operate as a bar to an action in respect of that person’s death under the <sup>M1</sup>Fatal Accidents Act 1976.
- (3) Such part (if any) of—
  - (a) the provisional damages; and
  - (b) any further damages awarded to the person in question before his death,
 as was intended to compensate him for pecuniary loss in a period which in the event falls after his death shall be taken into account in assessing the amount of any loss of support suffered by the person or persons for whose benefit the action under the Fatal Accidents Act 1976 is brought.
- (4) No award of further damages made in respect of that person after his death shall include any amount for loss of income in respect of any period after his death.
- (5) In this section “provisional damages” means damages awarded by virtue of subsection (2)(a) of section 32A of the <sup>M2</sup>Supreme Court Act 1981 or section 51 of the <sup>M3</sup>County Courts Act 1984 and “further damages” means damages awarded by virtue of subsection (2)(b) of either of those sections.

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- (6) Subsection (2) above applies whether the award of provisional damages was before or after the coming into force of that subsection; and subsections (3) and (4) apply to any award of damages under the 1976 Act or, as the case may be, further damages after the coming into force of those subsections.
- (7) In the application of this section to Northern Ireland—
- (a) for references to the Fatal Accidents Act 1976 there shall be substituted references to the <sup>M4</sup>Fatal Accidents (Northern Ireland) Order 1977;
  - (b) for the reference to subsection (2)(a) and (b) of section 32A of the Supreme Court Act 1981 and section 51 of the County Courts Act 1984 there shall be substituted a reference to paragraph 10(2)(a) and (b) of Schedule 6 to the <sup>M5</sup>Administration of Justice Act 1982.

#### Marginal Citations

- M1 1976 c. 30
- M2 1981 c. 54
- M3 1984 c. 28
- M4 S.I. 1977/1251 (N.I. 18)
- M5 1982 c. 53

## 4 Enhanced protection for structured settlement annuitants. **U.K.**

- (1) In relation to an annuity purchased for a person pursuant to a structured settlement from an authorised insurance company within the meaning of the <sup>M6</sup>Policyholders Protection Act 1975 (and in respect of which that person as annuitant is accordingly the policyholder for the purposes of that Act) sections 10 and 11 of that Act (protection in the event of liquidation of the insurer) [<sup>F2</sup>as applied by any transitional provisions made by order under section 426 of the 2000 Act] shall have effect as if any reference to ninety per cent. of the amount of the liability, of any future benefit or of the value attributed to the policy were a reference to the full amount of the liability, benefit or value.
- (2) Those sections [<sup>F2</sup>as applied by any transitional provisions made by order under section 426 of the 2000 Act] shall also have effect as mentioned in subsection (1) above in relation to an annuity purchased from an authorised insurance company within the meaning of the 1975 Act pursuant to any order incorporating terms corresponding to those of a structured settlement which a court makes when awarding damages for personal injury.
- (3) Those sections [<sup>F2</sup>as applied by any transitional provisions made by order under section 426 of the 2000 Act] shall also have effect as mentioned in subsection (1) above in relation to an annuity purchased from or otherwise provided by an authorised insurance company within the meaning of the 1975 Act pursuant to terms corresponding to those of a structured settlement contained in an agreement made by—
- (a) the Motor Insurers' Bureau; or
  - (b) a Domestic Regulations Insurer,
- in respect of damages for personal injury which the Bureau or Insurer undertakes to pay in satisfaction of a claim or action against an uninsured driver.

[<sup>F3</sup>(3A) In relation to an annuity—

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- (a) purchased for a person pursuant to a structured settlement from an authorised insurer;
- (b) purchased from such an insurer pursuant to any order of the kind referred to in subsection (2); or
- (c) purchased from or otherwise provided by such an insurer pursuant to terms corresponding to those of a structured settlement contained in an agreement of the kind referred to in subsection (3),

any long term insurance provision in the Financial Services Compensation Scheme has effect in accordance with subsection (3B).

- (3B) To the extent that any long term insurance provision limits the obligation of the scheme manager to make payments or secure continuity of insurance by reference to any amount less than the full amount of any liability, benefit or value due under a contract of long term insurance, the provision has effect as if the reference to that amount were a reference to the full amount of the liability, benefit or value.

- (3C) In this section—

“the 2000 Act” means the Financial Services and Markets Act 2000;

“authorised insurer” means an authorised person within the meaning of the 2000 Act with permission under that Act to effect or carry out contracts of insurance as principal;

“Financial Services Compensation Scheme” means the Financial Services Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000;

“long term insurance provision” means any provision in the Financial Services Compensation Scheme requiring the scheme manager to—

- (a) pay compensation in respect of a liability of an authorised insurer in liquidation under a contract of long term insurance;
- (b) secure continuity of insurance for parties to contracts of long term insurance in the event that an authorised insurer goes into liquidation; or
- (c) secure that payments are made in respect of benefits falling due under contracts of long term insurance during any period while the scheme manager is seeking to make arrangements to secure continuity of insurance as mentioned in (b) above;

“scheme manager” means a body corporate established in accordance with section 212(1) of the 2000 Act.

- (3D) In subsections (3B) and (3C) above—

- (a) a reference to a contract of long term insurance must be read with—
  - (i) section 22 of the 2000 Act;
  - (ii) any relevant order under that section; and
  - (iii) Schedule 2 to that Act;
- (b) an authorised insurer is in liquidation when—
  - (i) a resolution has been passed in accordance with the provisions of the Insolvency Act 1986 or (as the case may be) of the Insolvency (Northern Ireland) Order 1989 for the voluntary winding up of the insurer, otherwise than merely for the purpose of reconstruction of the insurer or of amalgamation with another insurer; or

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- (ii) without any such resolution having been passed beforehand, an order has been made for the winding up of the insurer by the court under that Act or that Order.]
- (4) In subsection (3) above “the Motor Insurers’ Bureau” means the company of that name incorporated on 14th June 1946 under the <sup>M7</sup>Companies Act 1929 and “a Domestic Regulations Insurer” has the meaning given in the Bureau’s Domestic Regulations.
- (5) [<sup>F4</sup>Subsections (1) to (3) of this section apply] if the liquidation of the authorised insurance company begins (within the meaning of the 1975 Act) after the coming into force of this section irrespective of when the annuity was purchased or provided.
- [<sup>F5</sup>(6) Subsections (3A) to (3D) of this section apply if the liquidation of the authorised insurer begins (within the meaning of subsection (3D)) after the coming into force of section 19 of the 2000 Act, irrespective of when the annuity was purchased or provided.]

#### Textual Amendments

- F2** Words in s. 4(1)-(3) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 350(a)  
**F3** S. 4(3A)-(3D) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 350(b)  
**F4** Words in s. 4(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 350(c)  
**F5** S. 4(6) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 350(d)

#### Marginal Citations

- M6** 1975 c. 75  
**M7** 1929 c. 23

## 5 Meaning of structured settlement. **U.K.**

- (1) In section 4 above a “structured settlement” means an agreement settling a claim or action for damages for personal injury on terms whereby—
- the damages are to consist wholly or partly of periodical payments; and
  - the person to whom the payments are to be made is to receive them as the annuitant under one or more annuities purchased for him by the person against whom the claim or action is brought or, if he is insured against the claim, by his insurer.
- (2) The periodical payments may be for the life of the claimant, for a specified period or of a specified number or minimum number or include payments of more than one of those descriptions.
- (3) The amounts of the periodical payments (which need not be at a uniform rate or payable at uniform intervals) may be—
- specified in the agreement, with or without provision for increases of specified amounts or percentages; or
  - subject to adjustment in a specified manner so as to preserve their real value; or
  - partly specified as mentioned in paragraph (a) above and partly subject to adjustment as mentioned in paragraph (b) above.
- (4) The annuity or annuities must be such as to provide the annuitant with sums which as to amount and time of payment correspond to the periodical payments described in the agreement.

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- (5) Payments in respect of the annuity or annuities may be received on behalf of the annuitant by another person or received and held on trust for his benefit under a trust of which he is, during his lifetime, the sole beneficiary.
- (6) The Lord Chancellor may by an order made by statutory instrument provide that there shall for the purposes of this section be treated as an insurer any body specified in the order, being a body which, though not an insurer, appears to him to fulfil corresponding functions in relation to damages for personal injury claimed or awarded against persons of any class or description, and the reference in subsection (1)(b) above to a person being insured against the claim and his insurer shall be construed accordingly.
- (7) In the application of subsection (6) above to Scotland for the reference to the Lord Chancellor there shall be substituted a reference to the Secretary of State.
- (8) Where—
- (a) an agreement is made settling a claim or action for damages for personal injury on terms whereby the damages are to consist wholly or partly of periodical payments;
  - (b) the person against whom the claim or action is brought (or, if he is insured against the claim, his insurer) purchases one or more annuities; and
  - (c) a subsequent agreement is made under which the annuity is, or the annuities are, assigned in favour of the person entitled to the payments (so as to secure that from a future date he receives the payments as the annuitant under the annuity or annuities),
- then, for the purposes of section 4 above, the agreement settling the claim or action shall be treated as a structured settlement and any such annuity assigned in favour of that person shall be treated as an annuity purchased for him pursuant to the settlement.
- (9) Subsections (2) to (7) above shall apply to an agreement to which subsection (8) above applies as they apply to a structured settlement as defined in subsection (1) above (the reference in subsection (6) to subsection (1)(b) being read as a reference to subsection (8)(b)).

## 6 Guarantees for public sector settlements. **U.K.**

- (1) This section applies where—
- (a) a claim or action for damages for personal injury is settled on terms corresponding to those of a structured settlement as defined in section 5 above except that the person to whom the payments are to be made is not to receive them as mentioned in subsection (1)(b) of that section; or
  - (b) a court awarding damages for personal injury makes an order incorporating such terms.
- (2) If it appears to a Minister of the Crown that the payments are to be made by a body in relation to which he has, by virtue of this section, power to do so, he may guarantee the payments to be made under the agreement or order.
- (3) The bodies in relation to which a Minister may give such a guarantee shall, subject to subsection (4) below, be such bodies as are designated in relation to the relevant government department by guidelines agreed upon between that department and the Treasury.

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- (4) A guarantee purporting to be given by a Minister under this section shall not be invalidated by any failure on his part to act in accordance with such guidelines as are mentioned in subsection (3) above.
  - (5) A guarantee under this section shall be given on such terms as the Minister concerned may determine but those terms shall in every case require the body in question to reimburse the Minister, with interest, for any sums paid by him in fulfilment of the guarantee.
  - (6) Any sums required by a Minister for fulfilling a guarantee under this section shall be defrayed out of money provided by Parliament and any sums received by him by way of reimbursement or interest shall be paid into the Consolidated Fund.
  - (7) A Minister who has given one or more guarantees under this section shall, as soon as possible after the end of each financial year, lay before each House of Parliament a statement showing what liabilities are outstanding in respect of the guarantees in that year, what sums have been paid in that year in fulfilment of the guarantees and what sums (including interest) have been recovered in that year in respect of the guarantees or are still owing.
  - (8) In this section “government department” means any department of Her Majesty’s government in the United Kingdom and for the purposes of this section a government department is a relevant department in relation to a Minister if he has responsibilities in respect of that department.
- [<sup>F6</sup>(8A) In the application of subsection (3) above to Scotland, for the words from “guidelines” to the end there shall be substituted “the Minister”.]
- [<sup>F7</sup>(8B) In the application of this section to Scotland, “relevant government department” shall be read as if it was a reference to any part of the Scottish Administration and subsection (8) shall cease to have effect.]
- (9) The Schedule to this Act has effect for conferring corresponding powers on Northern Ireland departments.

#### Textual Amendments

- F6** S. 6(8A) inserted (1.7.1999) by 1998 c. 46, s. 125, **Sch. 8, para. 34** (with s. 126(3)-(11)); S.I. 1998/3178, **art. 2(1)**.
- F7** S. 6(8B) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. 1 para. 126(3)**

## 7 Interpretation. **U.K.**

- (1) Subject to subsection (2) below, in this Act “personal injury” includes any disease and any impairment of a person’s physical or mental condition and references to a claim or action for personal injury include references to such a claim or action brought by virtue of the <sup>M8</sup>Law Reform (Miscellaneous Provisions) Act 1934 and to a claim or action brought by virtue of the <sup>M9</sup>Fatal Accidents Act 1976.
- (2) In the application of this Act to Scotland “personal injury” has the meaning given by section 10(1) of the <sup>M10</sup>Damages (Scotland) Act 1976.
- (3) In the application of subsection (1) above to Northern Ireland for the references to the Law Reform (Miscellaneous Provisions) Act 1934 and to the Fatal Accidents Act 1976

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there shall be substituted respectively references to the <sup>M11</sup>Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 and the <sup>M12</sup>Fatal Accidents (Northern Ireland) Order 1977.

**Marginal Citations**

- M8** 1934 c. 41  
**M9** 1976 c. 30  
**M10** 1976 c. 13  
**M11** 1937 c. 9(N.I.)  
**M12** S.I. 1977/1251 (N.I. 18)

**8 Short title, extent and commencement. U.K.**

- (1) This Act may be cited as the Damages Act 1996.
- (2) Section 3 does not extend to Scotland but, subject to that, this Act extends to the whole of the United Kingdom.
- (3) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.



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SCHEDULE **U.K.**

Section 6(9).

## GUARANTEES BY NORTHERN IRELAND DEPARTMENTS FOR PUBLIC SECTOR SETTLEMENTS

- 1 This Schedule applies where—
  - (a) a claim or action for damages for personal injury is settled on terms corresponding to those of a structured settlement as defined in section 5 of this Act except that the person to whom the payments are to be made is not to receive them as mentioned in subsection (1)(b) of that section; or
  - (b) a court awarding damages for personal injury makes an order incorporating such terms.
- 2 If it appears to a Northern Ireland department that the payments are to be made by a body in relation to which that department has, by virtue of this Schedule, power to do so, that department may guarantee the payments to be made under the agreement or order.
- 3 The bodies in relation to which a Northern Ireland department may give such a guarantee shall, subject to paragraph 4 below, be such bodies as are designated in relation to that department by guidelines agreed upon between that department and the Department of Finance and Personnel in Northern Ireland.
- 4 A guarantee purporting to be given by a Northern Ireland department under this Schedule shall not be invalidated by any failure on the part of that department to act in accordance with such guidelines as are mentioned in paragraph 3 above.
- 5 A guarantee under this Schedule shall be given on such terms as the Northern Ireland department concerned may determine but those terms shall in every case require the body in question to reimburse that department, with interest, for any sums paid by that department in fulfilment of the guarantee.
- 6 A Northern Ireland department which has given one or more guarantees under this Schedule shall, as soon as possible after the end of each financial year, lay before the Northern Ireland Assembly a statement showing what liabilities are outstanding in respect of the guarantees in that year, what sums have been paid in that year in fulfilment of the guarantees and what sums (including interest) have been recovered in that year in respect of the guarantees or are still owing.

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