

**EXPLANATORY MEMORANDUM TO THE  
DAMAGES (GOVERNMENT AND HEALTH SERVICE BODIES) ORDER  
2005**

**2005 No.474**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 This Order designates bodies as government and health service bodies for the purposes of the Damages Act 1996. A court may not make an order that damages for future pecuniary loss for personal injury are to take the form of periodical payments unless the continuity of payment is reasonably secure. One of the circumstances in which payment is reasonably secure is where the source of payment is a designated government or health service body. Later alterations in the method of payment are also permitted, without the need for further approval by the court, where the source of payment is a designated government or health service body.

**3. Matters of special interest to Joint Committee on Statutory Instruments**

3.1 None.

**4. Legislative background**

4.1 Section 2 of the Damages Act 1996 gave courts in the United Kingdom the power to order that damages for future pecuniary loss in respect of personal injury are to be paid wholly or partly in the form of periodical payments rather than a lump sum, provided that the parties consent. The power did not extend to making such an order should the parties not both consent, or to varying the order subsequently.

4.2 Section 100 of the Courts Act 2003 (together with section 101, which makes provision for enhanced protection for periodical payments) amends the 1996 Act to extend the power in respect of England, Wales and Northern Ireland. It replaces section 2 of the 1996 Act with three new sections which focus primarily on enabling the court to order that damages for future pecuniary loss in respect of personal injury should take the form wholly or partly of periodical payments, and on providing that the Lord Chancellor may by Order enable a court to vary an order or settlement providing for periodical payments in specified circumstances. The Lord Chancellor is also given the power to designate by Order the government and health service bodies which are reasonably secure as a source of periodical payments.

**5. Extent**

5.1 This instrument applies to England, Wales and Northern Ireland.

## **6. ECHR**

6.1 Not applicable.

## **7. Policy background**

7.1 In March 2002 the Lord Chancellor published a consultation paper “Damages for future loss: Giving the courts the power to order periodical payments for future loss and care costs in personal injury cases”, which sought views on the use of periodical payments in personal injury cases. The proposals contained in the consultation paper were taken forward in sections 100 and 101 of the Courts Act 2003. The post-consultation report can be accessed at <http://www.dca.gov.uk/consult/general/periodpayresp.htm>. A clear majority of responses agreed that the courts should have the power to order periodical payments without the parties’ consent. It is important in ordering periodical payments that the court should be satisfied that the continuity of the payments is reasonably secure. The designation of specified government and health service bodies as offering that security avoids the need for detailed evidence to be provided to the court in these cases.

## **8. Impact**

8.1 A Regulatory Impact Assessment in relation to the power to order periodical payments was published in November 2002. This Order does not create any additional impact.

## **9. Contact details**

9.1 Tony Jeeves at the Department for Constitutional Affairs Tel: 0207 210 1214 or email [anthony.jeeves@dca.gsi.gov.uk](mailto:anthony.jeeves@dca.gsi.gov.uk) can answer any queries regarding the instrument.