EXPLANATORY MEMORANDUM TO

The Damages (Personal Injury) Order (Northern Ireland) 2021

S.R. 2021 No. 115

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 section 1 of the Damages Act 1996, after consulting the Government Actuary and the Department of Finance, and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the Statutory Rule is to set the assumed rate of return on investment of a lump sum award of damages for future financial losses (e.g. cost of care and loss of earnings), known as the personal injury discount rate, at minus 1.75 per cent. The prescribed rate must be taken into account by a court in calculating the amount of damages for future financial loss in a personal injury case.

3. Background

3.1. The power to prescribe the discount rate is contained in section 1 of the Damages Act 1996. The rate was last set, at 2.5 per cent, by the Lord Chancellor in 2001 - see the Damages (Personal Injury) Order 2001 (S.I. 2001 No. 2301). That instrument applied to England and Wales and Northern Ireland.

3.2. Following the devolution of justice functions to the Northern Ireland Assembly, the Department is responsible for setting the discount rate in Northern Ireland, having consulted the Government Actuary and the Department of Finance.

3.3. The rate has to be set in accordance with legal principles set out by the House of Lords in the case of Wells v Wells [1999] 1 AC 345. In general terms, these state that the rate should ensure that personal injury claimants are fully compensated for any future financial losses (but neither more nor less) and should be set on the basis that claimants are to be treated as very risk averse investors. This, in effect, requires the rate to be set on the basis that a claimant invests their lump sum in Index Linked Gilts.

4. Consultation

4.1. The Government Actuary and the Department of Finance have been consulted in accordance with section 1(4) of the Damages Act 1996.

5. Equality Impact

5.1. It is considered that an equality impact assessment is not required under section 75 of the Northern Ireland Act 1998, as the Rule will not have any significant implications for equality of opportunity.

6. Regulatory Impact

6.1. The impact on business, charities or voluntary bodies and the public sector will be to increase the amount of damages for future financial loss that may be payable in any personal injury action to which they are a party. This may have an effect on the cost of insurance.

6.2. A regulatory impact assessment has not been carried out for this Rule. The new rate does not arise from any change in policy, rather will give effect to the legal principles governing the setting of the rate, under which the impact on defendants of a change in the rate cannot be taken into account.

7. Financial Implications

7.1. As noted above, there will be a financial impact for defendants in personal injury cases in respect of claims for damages for future financial losses, in particular, for the insurance industry and the public sector. There may be an impact on the cost of insurance. However, the Rule gives effect to the legal principles which govern the setting of the rate, which do not permit the financial impact on defendants to be taken into account.

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.