

Damages (Investment Returns and Periodical Payments) (Scotland) Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

Groupings of amendments

Rate of return: frequency of review

1, 2, 3, 4, 5, 6

Rate of return: standard adjustments

11, 13

Minor and technical

7, 9

Notional portfolio: review

14

Periodical payments: pursuer's wishes

12

Periodical payments: continuity of payment

8

Periodical payments: variation of settlement

15, 16

Periodical payments: expenses in case

10

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Amendments in debating order

Rate of return: frequency of review

Ash Denham

- 1 In the schedule, page 12, line 22, leave out <3-year> and insert <5-year>

Ash Denham

- 2 In the schedule, page 12, line 23, leave out <3-year> and insert <5-year>

Ash Denham

- 3 In the schedule, page 12, line 26, leave out first <3-year> and insert <5-year>

Ash Denham

- 4 In the schedule, page 12, line 26, leave out second <3-year> and insert <5-year>

Ash Denham

- 5 In the schedule, page 12, line 36, leave out <3-year> and insert <5-year>

Ash Denham

- 6 In the schedule, page 12, line 36, leave out <3> and insert <5>

Rate of return: standard adjustments

Jackie Baillie

- 11 In the schedule, page 14, line 12, leave out <0.5 of a percentage point> and insert <1.5 percentage points>

Dean Lockhart

- 13 In the schedule, page 14, line 15, leave out <0.5> and insert <0.25>

Minor and technical

Ash Denham

- 7 In the schedule, page 14, line 27, leave out from <, with> to <The> in line 31 and insert—

<(1A) In the table—

- (a) the first column shows the types of things that the portfolio is composed of,
- (b) the second column shows the percentage that each of the types of things is of the portfolio.

(2) Here is the>

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Ash Denham

- 9 In section 4, page 7, line 28, leave out <person who suffered the injury> and insert <injured person>

Notional portfolio: review

Dean Lockhart

- 14 In the schedule, page 15, leave out lines 28 to 31 and insert—
- <Review of portfolio and hypothetical investor*
- 16 (1) Before the review of any subsequent rates of return is commenced under paragraph 2(1) the Scottish Ministers must—
- (a) review whether the notional portfolio remains suitable for investment in by a hypothetical investor, and
 - (b) consider whether regulations under paragraph 14 or 15 are required.
- (2) In conducting a review under sub-paragraph (1)(a) the Scottish Ministers must consult such persons as they consider appropriate.>

Periodical payments: pursuer's wishes

Jackie Baillie

- 12 In section 3, page 2, line 22, leave out from <and> to end of line 23 and insert—
- <(A3) In considering whether to make an order in accordance with subsection (A2), the court must—*
- (a) provide the parties with an opportunity to make representations as to whether it should do so, and
 - (b) decide in accordance with the position advanced to it by the pursuer, unless the court considers that there are compelling reasons not to do so in the whole circumstances of the particular case.”.>

Periodical payments: continuity of payment

Stewart Stevenson

- 8 In section 3, page 2, line 30, at end insert—
- <(1B) When a court makes an order for periodical payments it must state why it considers that the continuity of payment would be reasonably secure.”.>*

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Periodical payments: variation of settlement

Dean Lockhart

- 15 In section 4, page 5, line 39 leave out <, or in addition to,>

Dean Lockhart

- 16 In section 4, page 6, line 7, at end insert—
- <() the change is attributable to the injuries for which the court has awarded damages for future pecuniary loss, and>

Periodical payments: expenses in case

Ash Denham

- 10 After section 4, insert—

<Liability for bearing expenses in case

After section 2I of the Damages Act 1996 (see section 4 of this Act) there is inserted—

“2J Liability for bearing certain expenses

- (1) No court may make an award of expenses against the injured person in respect of any expenses which relate to—
 - (a) qualifying proceedings, or
 - (b) appeal proceedings.
- (2) The exception to this is where the injured person conducts the qualifying or (as the case may be) appeal proceedings otherwise than in an appropriate manner.
- (3) Qualifying proceedings are proceedings—
 - (a) by virtue of section 2C(4), as to variation of an order,
 - (b) by virtue of section 2F, as to variation of an order,
 - (c) by virtue of section 2G, as to suspension of a right in relation to an order,
 - (d) by virtue of section 2H as to variation of an agreement or as to suspension of a right in relation to an agreement, or
 - (e) by virtue of section 2I—
 - (i) as to lifting of a suspension of a right under section 2G in relation to an order, or
 - (ii) as to lifting of a suspension of a right under section 2H in relation to an agreement.
- (4) Appeal proceedings are proceedings in an appeal arising from qualifying proceedings.
- (5) In the case of qualifying proceedings or appeal proceedings concerning something sought in relation to an agreement, the rule and the exception in this section about an award of expenses are subject to any wholly or partly different provision in the agreement that governs the matter of who is to bear any expenses of the kind covered by this section.

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- (6) In the case of qualifying proceedings or appeal proceedings concerning something sought in relation to an order, the rule in this section about an award of expenses is subject to any further exceptions specified in an act of sederunt as mentioned in section 8(6) of the Civil Litigation Act.
- (7) The issue of whether the injured person conducts qualifying proceedings or appeal proceedings in an appropriate manner is to be determined in accordance with section 8(4) and (5) of the Civil Litigation Act (with the references there to the claim or proceedings to be read in connection with this section as if to the qualifying or (as the case may be) appeal proceedings).
- (8) This section is without prejudice to section 8(1) to (3) of, together with section 8(4) to (7) of, the Civil Litigation Act.
- (9) In this section—
 - (a) a reference to the injured person—
 - (i) is to the person who suffered the injury in respect of which the order or (as the case be) the agreement in question has been made, but
 - (ii) includes someone representing or responsible for the interests of the injured person where the injured person is not a party in the qualifying or (as the case may be) appeal proceedings in the injured person's own name,
 - (b) “the Civil Litigation Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018.”.>

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