

Damages Act 2019

Principal Act

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| Act. No. 2019-22 | <i>Commencement (LN. 2019/155)</i> | 5.8.2019 |
| | <i>Assent</i> | 23.7.2019 |
| Amending enactments | Relevant current provisions | Commencement date |
| Act. 2023-15 | Long Title, ss. 2A, 5-6 | 8.6.2023 |

ARRANGEMENT OF SECTIONS

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AN ACT TO MAKE NEW PROVISION IN RELATION TO THE APPLICABLE RATE OF RETURN ON INVESTMENT OF DAMAGES FOR PERSONAL INJURY; FOR GUIDELINES RELATING TO THE ASSESSMENT OF GENERAL DAMAGES IN PERSONAL INJURY CASES AND TO MAKE OTHER PROVISION IN RELATION TO DAMAGES FOR PERSONAL INJURY,

Title.

1 . This Act may be cited as the Damages Act 2019.

Commencement.

2 . This Act comes into operation on the day appointed by the Minister with responsibility for Justice by notice in the Gazette.

Interpretation.

2A. In this Act, “personal injury” includes any disease and any impairment of a person’s physical or mental condition.

Assumed rate of return on investment of damages.

3.(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 take into account such rate of return (if any) as may from time to time be prescribed by an Order made by the Minister with responsibility for Justice after consultation with the Financial Secretary of Her Majesty’s Government of Gibraltar.

(2) If and to the extent that a rate has not been prescribed under subsection (1), the rate of return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury shall be as set out in an Order made in relation to such damages made under the United Kingdom’s Damages Act 1996 in relation to England and Wales (as amended or replaced from time to time).

Guidelines for the Assessment of General Damages in Personal Injury Cases.

4.(1) The Chief Justice, after consultation with the Law Commission established by the Law Commission Act 2017, the Financial Secretary of Her Majesty’s Government of Gibraltar and such other persons or bodies as the Chief Justice thinks fit, may issue guidelines relating to the assessment of general damages in personal injury cases, which may be general in nature or limited to a particular category of proceedings or injury.

(2) Every court must, in assessing the quantum of general damages in personal injury cases, have regard to any guidelines issues in accordance with subsection (1) which are relevant to the case.

(3) If and to the extent that guidelines have not been issued under subsection (1), the court must have regard to the Guidelines for the Assessment of General Damages in Personal Injury Cases issued by the Judicial College of England and Wales (as amended or replaced from time to time).

(4) For the purposes of subsection (3) the Guidelines for the Assessment of General Damages in Personal Injury Cases shall be read with such modifications (for example, in nomenclature) as the circumstances of Gibraltar may require and so far only as the circumstances of Gibraltar may permit.

(5) Without limiting subsection (4) as to modifications, any reference in the Guidelines for the Assessment of General Damages in Personal Injury Cases to an Act of the United Kingdom Parliament is, if there is a corresponding Gibraltar Act, to be read as a reference to that Act.

Periodical payments.

5.(1) Subject to subsection (3), a court awarding damages for future pecuniary loss in respect of personal injury-

- (a) may order that the damages are wholly or partly to take the form of periodical payments; and
- (b) shall consider whether to make that order.

(2) Subject to subsection (3), a court awarding other damages in respect of personal injury may, if the parties consent, order that the damages are wholly or partly to take the form of periodical payments.

(3) A court may not make an order for periodical payments unless the paying party is the Government, the Gibraltar Health Authority or the Care Agency.

(4) Where a person has a right to receive payments under an order for periodical payments, or where an arrangement is entered into in satisfaction of an order which gives a person a right to receive periodical payments, that person's right under the order or arrangement may not be assigned or charged without the approval of the court which made the order; and –

- (a) a court shall not approve an assignment or charge unless satisfied that special circumstances make it necessary; and
- (b) a purported assignment or charge, or agreement to assign or charge, is void unless approved by the court.

(5) Where an order is made for periodical payments, an alteration of the method by which the payments are made shall be treated as a breach of the order unless it is approved by the court which made the order.

(6) An order for periodical payments shall be treated as providing for the amount of payments to vary by reference to the index of retail prices published by the Government Statistician.

(7) But an order for periodical payments may include provision-

- (a) disapplying subsection (6); or
- (b) modifying the effect of subsection (6).

(8) In this section “damages” includes an interim payment which a court orders a defendant to make to a claimant.

(9) This section is without prejudice to any power exercisable apart from this section.

Variation of orders and settlements.

6.(1) The Minister with responsibility for Justice may by order enable a court which has made an order for periodical payments to vary the order in specified circumstances.

(2) The Minister with responsibility for Justice may by order enable a court in specified circumstances to vary the terms on which a claim or action for damages for personal injury is settled by agreement between the parties if the agreement-

- (a) provides for periodical payments; and
- (b) expressly permits a party to apply to a court for variation in those circumstances.

(3) An order under this section may make provision-

- (a) which operates wholly or partly by reference to a condition or other term of the court’s order or of the agreement;
- (b) about the nature of an order which may be made by a court on a variation;
- (c) about the matters to be taken into account on considering variation;
- (d) of a kind that could be made by rules of court.