

Personal injury discount rate: how it should be set

Screening for impact assessment

Aim of the policy

The aim of the policy is that the legal framework for setting the personal injury discount rate ensures that an award of damages for future financial loss neither under- nor over- compensates the person in receipt of the damages.

Screening for social impacts

1. Crime Impact Assessment

	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
Community Safety	Will the policy impact on the costs of or demand for legal goods or services to consumers, or impact on the costs of disposal of legal goods?		X		X	
	Will the policy involve the introduction, delivery or amendment of a financial measure, i.e. a tax or concession, grant or subsidy?		X		X	
	Will the policy introduce, remove or amend a legal requirement or regulatory power?	X			X	The policy would amend the legal framework for setting the personal injury discount rate. It would not create, amend or remove a criminal offence.
	Will it impact on funding for law or regulatory enforcement activity including demand for legal aid?		X		X	
	CONCLUSION				X	

When Is a Full Crime Impact Assessment Required?

If the answer to any of the above questions is yes, consideration should be given to undertaking a Criminal Activity Impact Assessment.

In undertaking the assessment it is only necessary to address the relevant questions highlighted by the screening tool.

2. Community Safety & Victims

	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
Community Safety	Will the policy/project contribute to community safety or impact on fear of crime?		X		X	
	Is it likely to have an impact on any specific type of crime?		X		X	
	Will the policy/project have an impact on victims of crime?		X		X	
	Is there any evidence to suggest that the policy would have a particular impact on victims of the conflict?		X		X	
	CONCLUSION				X	

When Is a Full Community Safety & Victims Impact Assessment Required?

If the answer to any of the above questions is yes, consideration should be given to undertaking a Community Safety & Victims Impact Assessment.

Where a potentially significant impact is identified, a Community Safety Impact Assessment should be undertaken.

3. **Equality** (this must be completed in line with the Equality Commission’s [Guide to the Statutory Duties](#))

Equality	Screening Questions	Response to Screening Questions			Justification / Key issues and groups to focus on
	What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?				
		Major	Minor	None	
	Religious belief			X	
	Political opinion			X	
	Racial group			X	
	Age			X	
	Marital status			X	
	Sexual orientation			X	
	Men and women generally			X	
Disability			X		
Dependants			X		
Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?					
	Yes	No			
Religious belief			X		
Political opinion			X		
Racial group			X		
Age			X		
Marital status			X		
Sexual orientation			X		
Men and women generally			X		
Disability			X		
Dependants			X		

	To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?			
		Major	Minor	None
	Religious belief			X
	Political opinion			X
	Racial group			X
	Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?			
		Yes	No	
	Religious belief			X
	Political opinion			X
	Racial group			X
	CONCLUSION			An equality impact assessment is not required as there are no significant implications for equality of opportunity.

When Is a Full Equality Impact Assessment Required?

If the answer to any of the above is yes, consideration must be given to undertaking a full EQIA. A full EQIA must be undertaken where a significant implication for equality of opportunity is identified.

4. Health

1. Health Determinants

Is the initiative affecting any of the following determinants of health?

LIFESTYLE	Positive Effect	Negative Effect	No Effect
Diet			X
Physical activity			X
Safe sex			X
Substance use: alcohol, tobacco, illegal substances			X
Other			X

Explanation: If there is likely to be a positive or negative effect on lifestyle factors, note briefly here what those effects are.

PHYSICAL ENVIRONMENT	Positive Effect	Negative Effect	No Effect
Air			X
Built Environment & Land Use			X
Noise			X
Water			X
Other			X

Explanation: If there is likely to be a positive or negative effect on the physical environment, note briefly here what those effects are.

SOCIO-ECONOMIC ENVIRONMENT	Positive Effect	Negative Effect	No Effect
Crime			X
Education			X
Employment			X
Family Cohesion			X
Housing			X
Income			X
Recreation			X
Social Cohesion			X
Transport			X
Other			X

Explanation: If there is likely to be a positive or negative effect on socio-economic factors, note briefly here what those effects may be.

2. Health Care

Is the initiative affecting access to health services?

HEALTH CARE	Positive Effect	Negative Effect	No Effect
Access to Health Services	X		

Explanation: If there is likely to be a positive or negative effect on access, note briefly here what those effects are.

Ensuring full compensation will ensure that recipients of damages are able to meet the cost of all health services for which the damages are awarded.

3. Population Affected

Considering the health impacts identified above, which of the following sections of the population will be affected (Includes Section 75 groups)

LIFESTYLE	Positive Effect	Negative Effect	No Effect
Whole Population	X		
Sub-Populations:			
Children (0-18 years)			
Older People			
Marital Status			
Persons with dependants			
Persons without dependants			
Political Opinion			
Religious Belief			
Chronically ill			
Economically Disadvantaged People			
Gender (specify male/female)			
Homeless			
Sexual Orientation			
People with Disabilities			
Racial and Ethnic Minority Groups			
Rural Population			
Unemployed			
Other			

Explanation: If there is likely to be a positive or negative effect on the whole or a section of the population, note briefly here what those effects are.

Note: The proposal may have a positive impact on one section of the population and a negative effect on another. Specify where this occurs.

Ensuring full compensation will ensure that recipients of damages – people who have suffered personal injuries, illness or disease as a result of negligence, and who come from the whole population – are able to meet the cost of all health services for which the damages are awarded.

4. Recommendation

Considering the health impacts, if any, identified above, are these significant enough to warrant a health impact assessment?

YES	
No	X

This decision must be based on a judgement of the strength of the available evidence and its applicability to local conditions and the strength of feeling of stakeholders and key informants.

If No, what are the reasons for not carrying out a HIA.

Note: Possible reasons might include:

- Health impacts not considered significant enough
- Lack of evidence to show health impacts
- Not enough time to influence decisions on the proposal
- Lack of resources to carry out required level of research

The aim of the policy is that the legal framework for setting the personal injury discount rate ensures that persons who have suffered a personal injury are fully compensated (no more and no less), thus ensuring that compensation is sufficient to cover any medical expenses for which damages have been awarded. A health impact assessment is unnecessary.

Note:

Further information on HIAs can be obtained from the following web sites:

- (i) the dedicated Institute of Public Health HIA site (<https://.publichealth.ie/hia>)
- (ii) Investing for health (<http://www.investingforhealthni.gov.uk/impact.asp>).

5. Human Rights

The proforma will help you to articulate any human rights issues in the policy/proposal that you are working on. It is necessary for you to have read the OFMDFM guidance on human rights entitled “Get in on the Act; a practical guide to the Human Rights Act for public authorities in Northern Ireland” before completing this proforma.

If the policy/proposal is relevant to some rights but does not interfere with or limit them, your assessment must be signed off by a Senior Responsible Officer (Grade 7, equivalent or above). If you find that it does interfere with or limit one or more Convention rights, and your Senior Responsible Officer agrees, you must seek legal advice, even if it is considered that the interference or limitation is justified.

1. Policy title and aims

Please state the title and objective of the policy/proposal you are working on.

The personal injury discount rate: How should it be set?

The aim is that the legal framework for setting the personal injury discount rate ensures that an award of damages for future financial loss neither over-compensates nor under-compensates the person in receipt of the damages.

2. Rights which the policy/proposal engage

Go through each of the rights detailed in the table below. For each one consider whether the policy/proposal engages the right, i.e. how the policy/proposal you are working on could involve the right. Explain how the right is engaged.

Please note that the rights have been abbreviated so you should see the relevant Article in the Guide referred to above for the full title and explanation of the right.

Human Right	Does the Policy Engage the Right?	
	Yes/No	Explanation
Article 2 Right to life	No.	
Article 3 Prohibition of torture, inhuman and degrading treatment	No.	
Article 4 Prohibition of slavery and forced labour	No.	

Human Right	Does the Policy Engage the Right?	
	Yes/No	Explanation
Article 5 Right to liberty	No.	
Article 6 Right to a fair trial	No.	
Article 7 No punishment without law	No.	
Article 8 Right to respect for private and family life	No.	
Article 9 Freedom of thought conscience and religion	No.	
Article 10 Freedom of expression	No.	
Article 11 Freedom of assembly and association	No.	
Article 12 Right to marry and found a family	No.	
Article 14 Prohibition of discrimination	No.	
Protocol 1, Article 1 Right to property	No.	
Protocol 1, Article 2 Right to education	No.	
Protocol 1, Article 3 Right to free elections	No.	

If you have answered yes to any of these questions you must complete the rest of the proforma. If you have answered no to **all** of the questions, you may proceed to Question 9.

9. Article 14 equality issues

Even if it does not interfere with or limit a right or freedom, could the policy/proposal result in people being treated differently in relation to any of the Convention rights? Article 14 does not allow discrimination in the exercise of any of the other Convention rights.

For further information on Article 14, please refer to the relevant pages in the Guide.

Convention Article affected	How are people treated differently?	Is this justifiable?
n/a	n/a	n/a

You should now have a clearer view about the policy/proposal and the possibility of it engaging or interfering with Convention rights and freedoms.

Please ensure the proforma is also signed by your Senior Responsible Officer and if there is any possible interference or limitation refer to your legal advisor for further action and advice.

Please tick the statement that applies, and sign below.

a) The policy/proposal does not engage any Convention rights.

b) The policy/proposal does engage one or more of the Convention rights, but does not interfere with or limit it/them.

c) The policy/proposal interferes with or limits one or more Convention rights and legal advice is being sought.

Countersign, hold copy with policy papers and refer to your legal advisor.

Signed by Martin Moore (Official)

Date 20 April 2020 (Grade) 7

Signed by Jane Maguire (Senior Responsible Officer)

Date 7 May 2020 (Grade) 6 (Legal)

6. Rural

Name of Organisation:

Department of Justice

Title of Strategy, Policy, Plan or Public Service:

The personal injury discount rate: How should it be set?

Step 1: Define the Issue

Key questions to consider:

- *What are the objectives of the strategy, policy plan or service?*
- *What impact do you intend it to have in rural areas?*
- *How is 'rural' defined for the purposes of this policy/strategy/service/plan?*
- *What would constitute a fair rural outcome in this case?*

The objective is that the legal framework for setting the personal injury discount rate ensures that an award of damages for future financial loss neither over- nor under- compensates the person in receipt of the damages.

Step 2: Understand the situation

Key questions to consider:

- *What is the current situation in rural areas?*
- *What evidence (statistics, data, research, stakeholder advice) do you have about the position in rural areas?*
- *If the relevant evidence is not available, can this be sourced?*
- *Do you have access to the views of rural stakeholders about the likely impact of the policy?*
- *Are there existing design features or mitigations already in place to take account of rural needs?*

Evidence of the demographic profile of persons in receipt of damages is unavailable. It is unlikely that such persons are disproportionately resident in rural areas.

Step 3: Develop and appraise options

Key questions to consider:

- *Are there barriers to delivery in rural areas?*
- *If so, how can these be overcome or mitigated?*
- *Will it cost more to deliver in rural areas?*
- *What steps can be taken to achieve fair rural outcomes?*

There are no barriers to delivery of full compensation to people in rural areas.

Step 4: Prepare for Delivery

Key questions to consider:

- *Do the necessary delivery mechanisms exist in rural areas?*
- *Have you considered alternative delivery mechanisms?*
- *What action has been taken to ensure fair rural outcomes?*
- *Is there flexibility for local delivery bodies to find local solutions?*
- *Are different solutions required in different areas?*

Delivery is via the application by the judiciary of the personal injury discount rate, set under a legal framework to be determined by legislation. There are no specifically rural issues to take into consideration.

Step 5: Implementation & Monitoring

Key questions to consider:

- *Have you set any rural specific indicators or targets to monitor?*
- *How will the outcomes be measured in rural areas?*
- *Are there any statistics or data that you will collect to monitor rural needs and impacts?*

It is not proposed to monitor specifically for rural outcomes..

Step 6: Evaluation & Review

Key questions to consider:

- *What processes are in place to evaluate and review the implementation of the policy, strategy, plan or service?*
- *Have rural needs been factored into the evaluation process?*
- *How will lessons learned in relation to rural outcomes be used to inform future policy making and delivery?*

It is not proposed specifically to factor in rural needs to any evaluation and review, given the limited relevance of specifically rural issues.

Rural Needs Impact Assessment undertaken by:	Martin Moore
Position:	Grade 7, Family Courts and Tribunals Branch
Signature:	
Date completed:	20 th April 2020

Rural Needs Impact Assessment approved by:	Jane Maguire
Position:	Grade 6
Signature:	<i>Jane Maguire</i>
Date completed:	7 May 2020

7. Social Inclusion

	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
Poverty & Social Exclusion	Will the policy involve the spending of public monies, the allocation of non-financial resources or the delivery of a service?		X		X	
	Will the policy impact on socially excluded or vulnerable groups or involve the delivery of a service within or to socially excluded areas?		X		X	
	Will the policy address or impact on measures to promote employment or employability among the most disadvantaged?		X		X	
	Will the policy address or impact on other areas of inequality and disadvantage such as health, education and housing?		X		X	
	CONCLUSION					X

When is a Social Inclusion Impact Assessment Required?

If the answer to any of the above is yes, consideration should be given to undertaking a social inclusion impact assessment.

In undertaking the assessment it is only necessary to address the relevant questions highlighted by the screening tool.

8. Shared Future Policy Proofing

Strategic Environmental Assessment	Screening Questions	Response to Screening Questions		Consideration of mitigating measures required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	1. Does the proposed policy promote individuals from different religious, political, racial or other Section 75(1) backgrounds sharing or engaging together?		X		X	
2. Does the proposed policy inadvertently create a situation where people categorised in different groups under Section 75(1) backgrounds will be accessing services or facilities on a segregated or separate basis?		X		X		
3. Does the proposed policy remove or address any barriers to people sharing?		X		X		
4. Does the proposed policy inadvertently erect any barriers to people sharing?		X		X		
CONCLUSION					X	

Do mitigating measures need to be considered?

If proposals are likely inadvertently to reinforce divisions in society, mitigating measures need to be considered.

Screening for economic impacts

9. Economic Appraisal

ECONOMIC APPRAISAL	Screening Questions	Response to Screening Questions		Full Appraisal Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	Does the decision/proposal involve the spending or saving of public money?	X				X
Does the decision or proposal involve changes in the use of public resources?			X		X	
CONCLUSION					X	The policy is to ensure that the legal framework for setting the discount rate results in awards of damages that neither over-compensate nor under-compensate recipients (the 100% rule). While the amount of compensation paid is relevant to public bodies that are defendants in personal injury claims, the 100% rule means that this is not a relevant consideration.

When Is an Economic Appraisal Required?

If the answer to any of the above questions is yes, an economic appraisal may be required. However, the level of appraisal should be proportionate to the costs involved. Departmental economists can provide further advice in this regard.

10. Economic Impact Assessment

ECONOMIC APPRAISAL	Screening Questions	Response to Screening Questions		Full Appraisal Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	Will the policy impact on the provision of goods or services to consumers, or the uptake of such goods and services to consumers?	X			X	It is possible that the discount rate can affect the cost of insurance to consumers.
Will the policy impact on the region's infrastructure?		X		X		
Will the policy impact on investment in research and development or promote innovation and creativity?		X		X		
Will the policy impact on or encourage enterprise?		X		X		
Will the policy impact on the skills level within the economy?		X		X		
Will the policy address negative perceptions of Northern Ireland and/or help promote it as a place to live, work and invest?		X		X		

	CONCLUSION		X The policy is to ensure that the legal framework for setting the discount rate results in awards of damages that neither over-compensate nor under-compensate recipients (the 100% rule) and so is fair for claimants, defendants and wider society. While the overall amount of compensation paid by insurance companies may have an impact on the cost of insurance, the 100% rule means that this is not a relevant consideration in the setting of the rate under the applicable legal framework.
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When Is an Economic Impact Assessment Required?

If the answer to any of the above is yes, consideration should be given to undertaking an economic impact assessment. In undertaking the assessment it is only necessary to address the impacts highlighted by the screening tool.

11. Regulatory Impact Assessment

Regulatory	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	Is the policy or amendment to the policy likely to have a direct or indirect impact on businesses?	X		X		The personal injury discount rate affects the amount of awards of damages paid by defendants which, in turn, can affect insurance premiums paid by businesses, e.g. motor insurance and public liability insurance.
Is the policy or amendment to the policy likely to have a direct or indirect impact on the voluntary/community sector?	X		X		As above.	
CONCLUSION				X		The impact on the business and the voluntary/community sector needs to be assessed.

When Is a Regulatory Impact Assessment Required?

If the answer to any of the above questions is yes, consideration should be given to undertaking a Regulatory Impact Assessment. However, the level of appraisal should be proportionate to the costs involved.

A Regulatory Impact Assessment is not required for:

- i. Proposals which impose **no costs or no savings**, or negligible costs or savings on business, charities, social economy enterprises or the voluntary sector;
- ii. Increases in statutory fees by a predetermined formula such as the rate of inflation; or Road closure orders.

12. Legal Aid Impact

In considering the development of a policy proposal especially one involving the introduction of new criminal sanctions or civil penalties, the Northern Ireland Courts Service should be consulted at an early stage in the development of the proposal.

It will always be necessary to discuss and agree the consequences of the policy proposal, including the resource implications, of the new proposal for the workload of the courts and legal aid. Central to these considerations will be the completion of a legal aid impact test. This is not a difficult process but it is very important that it is carried out to ensure that there are no subsequent problems with securing policy approval for your proposal. Further guidance on undertaking a legal aid impact test is available later in this workbook. It should be noted that legal aid, subject to means and merits test, is available for many aspects of the law which are subject to trial in a court in Northern Ireland. Many new proposals brought forward by central government departments will directly impact on legal aid expenditure such as changing the criminal or civil law or improving or affecting in any way the rights of individuals without that impact being readily or immediately apparent.

Key questions to consider include:

Legal Aid	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	Will the new legislation impact on or have implications for the workload of the courts and legal aid?		X		X	
	Will the policy proposal involve any entitlement to benefits?		X		X	
	Will the new legislation or policy proposal impact on people?	X			X	There would be an impact on people, but not on legal aid.
	CONCLUSION				X	Policy will not have implications for legal aid.

13. State Aid Compliance

State Aid	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	Will the policy involve undertakings (businesses or any entity involved in economic activity)?		X		X	
CONCLUSION					X	

When Is an Assessment of State Aid Compliance Required?

If the answer to the above questions is yes, a state aid assessment should be undertaken.

Screening for environmental impacts

14. Assessment of Environmental Impacts

	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
Environmental	Will the project/policy impact on air quality i.e. will it lead to a change in emissions of air pollutants or the numbers of people affected by poor air quality?		X		X	
	Will the project/policy impact on climate change i.e. will it lead to changes in emissions of greenhouse gas, consumption of fossil fuels or increase the need to travel within the region?		X		X	
	Will it impact on the landscape or the use of land within the region?		X		X	
	Will it impact on the use of natural resources within the region?		X		X	
	Will it impact on bio-diversity within the region?		X		X	
	Will it involve a proposal that has the potential to impact on levels of noise?		X		X	
	CONCLUSION					X

When is an Environmental Impact Assessment Required?

If the answer to any of the above is yes, an environmental impact assessment should be undertaken.

15. Strategic Environmental Impact Assessment

Strategic Environmental Assessment	Screening Questions	Response to Screening Questions		Full Impact Assessment Required		Justification / Key issues and groups to focus on
		Yes	No	Yes	No	
	1. Is the plan/programme likely to have significant environmental effects? If yes:		X		X	
a. Is the plan/programme of the type listed in Article 3(2) which determine the use of small areas at local level, or which are minor modifications to plans and programmes;		X		X		
b. Where the plan/programme is not of the type listed in Article 3(2), does it set the framework for future development consent of projects?		X		X		
2. Is the sole purpose of the plan/programme to serve national defence or civil emergency?		X		X		
3. Is it a financial or budget plan/programme?		X		X		
4. Is it supported by the EU Structural Funds or the European Agricultural Guidance and Guarantee Fund for the programming periods from 2000 to 2006 or 2007?		X		X		
CONCLUSION					X	

When Is a Strategic Environmental Impact Assessment Required?

If the answer to question 1 and parts a or b is yes, then a full SEA is required. However If the answer to any one of questions 2, 3 or 4 is yes, an SEA is not required.

Outcome of Screening Exercise.

IMPACT ASSESSMENT / APPRAISAL	FULL ASSESSMENT / APPRAISAL REQUIRED		REASON
	Yes	No	
SOCIAL IMPACTS			
Crime		X	
Community Safety & Victims		X	
Equality		X	
Health		X	
Human Rights		X	
Rural		X	
Social Inclusion		X	
Shared Future		X	
ECONOMIC IMPACTS			
Economic Appraisal		X	
Economic Assessment		X	
Regulatory	X		
State Aid		X	
ENVIRONMENTAL IMPACTS			
Environmental		X	
Strategic Environmental		X	
SUSTAINABLE DEVELOPMENT IMPACT		X	