Department of Justice
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The personal injury discount rate: taking account of inflation

A consultation

November 2025

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1. Introduction

1.1 This consultation seeks views on whether or not there should be a change to the way inflation is to be allowed for by the Government Actuary when setting the personal injury discount rate for Northern Ireland.

1.2 Respondents are asked to answer the consultation questions that appear in bold throughout the paper.

1.3 The best way to respond to this consultation is by using the questionnaire on the Department's website at https://www.justice-ni.gov.uk/consultations which can be emailed to CivilJusticeandJudicialPolicyDivision@justice-ni.gov.uk. You can also respond online via Citizen Space on the NIDirect web site at https://consultations.nidirect.gov.uk/doj/doj-consultation-the-personal-injury-discount-rate

1.4 The consultation is open for ten weeks. The closing date for receipt of responses is 5.00pm on Wednesday 28 January 2026. Please note that it is unlikely that we will be able to consider responses received after this date.

1.5 If it would help you to have this document in a different format, such as Braille or large print, or in a language other than English, please contact us at CivilJusticeandJudicialPolicyDivision@justice-ni.gov.uk

Privacy notice

1.6 We intend to publish a summary of the responses to this consultation on the Department's website. Any contact details that identify a respondent as a private individual will be removed prior to publication. All information will be handled in accordance with the General Data Protection Regulation 2018. Respondents should also be aware that the Department's obligations under the Freedom of Information Act 2000 may require that any responses not subject to specific exemptions under the Act may be disclosed to other parties on request.

Complaints

1.7 If you have any concerns about the way that this consultation process is being or has been handled, please contact us at Governance.Unit@justice-ni.gov.uk

2. Background

2.1 In civil proceedings, an award of damages for personal injury will include damages for any future financial losses or expenses caused by the injury, e.g. loss of future earnings, care costs and medical expenses. Sometimes these losses and expenses will run for many years into the future. An award of this type is usually paid as a lump sum. The sum should be sufficient to meet all the claimant's losses and expenses and be exhausted at the end of the period for which it is awarded. This flows from the legal principle that a claimant should be fully compensated for all the losses and expenses arising from the injury but no more and no less (the '100% compensation principle').

2.2 The 100% compensation principle means that it is important that claimants do not profit from the investment of their award (or they would be over-compensated), but also that the impact of inflation is taken into account (or they would be under-compensated). This is achieved by a requirement under the Damages Act 1996 (the '1996 Act') for a court to apply a 'discount rate', which determines the percentage adjustment to the lump-sum award, to take account of the assumed return on investment. A positive rate means that the lump sum is reduced, but the rate can also be negative, meaning that the award is increased. A negative rate reflects expected returns on investment that are insufficient to overcome the effect of inflation on the value of the award.

2.3 Under the 1996 Act – as amended by the Damages (Return on Investment) Act (Northern Ireland) 2022 (the '2022 Act') – the personal injury discount rate for Northern Ireland is set by the Government Actuary using the methodology set out in Schedule C1 to the Act and is currently 0.5% as set in September 2024.

2.4 The statutory methodology involves determining the rate of return on a prescribed notional portfolio of investments over an assumed investment period of 43 years, making allowance for inflation based on a prescribed index, and standard adjustments to take account of the impact of taxation, the costs of investment advice and management, and a further margin. The detail of the elements of the methodology can be amended by secondary legislation, following a review to determine if the notional portfolio remains suitable for investment by a ‘hypothetical investor’. (The hypothetical investor is defined as someone who will invest damages as properly advised in order to meet the losses and expenses for which they have been awarded and be exhausted after 43 years.) This is the same methodology as is used for setting the rate for Scotland (Schedule B1), but different to how the rate is set for England and Wales (Schedule A1), where it is set by the Lord Chancellor. In setting the rate for England and Wales, the Lord Chancellor must have regard to various factors set out in the legislation, including a requirement to consult an expert panel chaired by the Government Actuary, but has discretion as to the detail of the methodology to be used including how the effect of inflation is allowed for.

2.5 The purpose of the changes to the 1996 Act made by the 2022 Act was to provide a process for setting the rate that is fair, transparent and clear. The legislation, therefore, prescribes the methodology under which the rate is to be set but provides that the rate itself is to be determined by the Government Actuary. This distinguishes between political decisions about the methodology and the actuarial exercise of setting the rate. This approach was intended to achieve an appropriate balance between political accountability and independent professional expertise and was preferred over the greater flexibility and discretion given to the Lord Chancellor under the England and Wales model.

Damages inflation and the discount rate

2.6 The methodology for setting the rate needs to take inflation into account because inflation reduces the value of an award of damages over time and offsets the increase in value resulting from the return on its investment. There is, however, no direct measure of ‘damages inflation’, i.e. the rate at which a lump-sum award of personal-injury damages is subject to inflation. In practice, the different heads of loss that make up a damages award, e.g. loss of earnings, care costs, and costs of drugs and equipment, will be subject to different inflationary pressures on both prices and earnings.

2.7 Historically, the Retail Prices Index (RPI) has been considered to be the best proxy measure for damages inflation, as it tended to lie somewhere between prices inflation as measured by the Consumer Prices Index (CPI) and earnings inflation, and was therefore considered to be suitable for damages, which are made up of products and services affected by prices, and care costs that are principally linked to earnings. The 1996 Act (at paragraph 9 of Schedule C1), therefore, requires the Government Actuary to make allowance for the impact of inflation by reference to:

- the Retail Prices Index, or
- some published information relating to costs, earnings or other monetary factors as is, for use instead of RPI, prescribed in regulations by the Department of Justice.

Changes to the Retail Prices Index

2.8 RPI is a measure of inflation published monthly by the Office of National Statistics, which measures the change in the cost of a sample of retail goods and services. It is considered, however, to have a number of shortcomings and the formula used to calculate it does not meet international statistical standards. In 2013, RPI lost its status as a 'national statistic', and in 2020, the UK Statistics Authority consulted on proposed changes to RPI that would align it with CPIH (the consumer prices index including owner occupiers' housing costs). These changes will come into effect in 2030.

The 2024 review of the personal injury discount rate for Northern Ireland

2.9 As the discount rate is calculated based on an assumed investment period of 43 years, the Department determined, in advance of the Government Actuary's 2024 review of the discount rate for Northern Ireland – and having consulted with stakeholders and considered advice from the Government Actuary's Department (GAD) – that RPI was no longer the best measure of inflation to use. This was because using inflation projections based on RPI would have resulted in a step change in those projections in 2030, after which RPI would become aligned with CPIH, which was expected to be lower than RPI based on historical experience. In Scotland, where the rate is set using the same methodology as that for Northern Ireland, the Scottish Government took the same view.

2.10 As noted above, under the 1996 Act, the alternative to using RPI is to use 'some published information relating to costs, earnings or other monetary factors as is … prescribed in regulations by the Department of Justice'. However, this requires the prescription of a single, unadjusted index and does not allow the Department to prescribe an adjustment to an index, therefore ruling out the possibility, for example, of prescribing an adjustment to CPI (such as CPI+0.5% or CPI+1%).

2.11 In the absence of a bespoke published measure for damages inflation, and the power to prescribe an adjusted measure, the Department had to choose either an existing prices-related index or an existing earnings-related index. Taking into consideration the points made by consultees representing claimants that the losses and expenses incurred by claimants in high-value personal injury cases were likely to be subject more to earnings inflation than prices inflation, the Department concluded that an earnings-based measure would be more appropriate than a prices-based measure.

2.12 There were two possible earnings-based indices that could have been prescribed: annual weekly earnings (AWE) and the annual survey of hours and earnings (ASHE). Although AWE is earnings data for Great Britain only, while ASHE is UK-wide data, GAD advised that Northern Ireland's relatively small population compared to the UK as a whole meant that there was unlikely to be any material difference between a GB-wide and a UK-wide sample. Further, since the methodology used to calculate ASHE has changed over time, it was considered to be less reliable than AWE for long-term projections, which utilise analysis of historical data. On balance, therefore, the Department decided to prescribe AWE as the alternative measure of inflation to RPI. This was given effect by the Damages (Process for Setting Rate of Return) Regulations (Northern Ireland) 2024.[1] Again, the Scottish

[1] Regulation 3(1) prescribes Average Weekly Earnings as the published information for use instead of the retail prices index for the purposes of paragraph 9(2) of Schedule C1 to the Damages Act 1996. Regulation 3(2) defines Average Weekly Earnings as: the measure of short-term average earnings used to measure changes in earnings over time (a) published periodically by the Statistics Board under the title "Average

Government took the same view as the Department and prescribed AWE for the review of the discount rate for Scotland.

Review of provision to allow for the impact of inflation

2.13 In publishing its conclusions following the consultation on the parameters for the 2024 review of the discount rate, the Department committed, before the end of the current Assembly mandate, to review how the legislation makes provision for the impact of inflation to be allowed for, to consider the scope for providing more flexibility.[2] This consultation fulfils that commitment. The Scottish Government made a similar commitment.

England and Wales

2.14 In setting the rate for England and Wales, the Lord Chancellor is simply required to make such allowance for inflation as he or she thinks appropriate. The rate in England and Wales was also reviewed in 2024. In its report to the Lord Chancellor, the Expert Panel, having reviewed the evidence and information provided to it, concluded that claimants are broadly exposed to price inflation and to earnings inflation and that CPI and general earnings inflation (in the range of 1.25% p.a. to 1.5% p.a. above CPI) were reasonable rates for the key components of damages inflation. Based on the evidence suggesting that earnings related damages are 65–85% of claimants' overall lump sum damages, they assumed that all claimants experience damage inflation of CPI+1% and the Lord Chancellor accepted this conclusion.

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weekly earnings in Great Britain"; (b)based on that body's Monthly Wages and Salaries Survey; and (c)which relates to the whole of the economy of Great Britain.

[2] Department of Justice (2024), *Parameters for the 2024 review of the personal injury discount rate for Northern Ireland: Response to consultation and next steps.* Available at [Consultation on the parameters for the 2024 review of the personal injury discount rate for Northern Ireland | Department of Justice](#).

3. Consideration

3.1 As discussed above, the process of reviewing the statutory parameters for setting the personal injury discount rate in Northern Ireland, which the Department undertook in advance of the Government Actuary's 2024 review of the rate, indicated a lack of flexibility in the legislation regarding how the impact of inflation is taken into account insofar as the only option is to use an existing, unadjusted measure of inflation.

3.2 The 1996 Act, in paragraph 9 of Schedule C1, provides as follows:

> 9 (1) Allowance must be made by the rate-assessor for the impact of inflation on the value of the return or investment to which paragraph 7(2) relates [i.e. the rate of return that could reasonably be expected to be achieved by a person who invests in the notional portfolio, and for a period of 43 years].
>
> (2) The impact of inflation is to be allowed for by reference to, whether indicating an upward or downward trend—
>
> (a) the retail prices index, or
>
> (b) some published information relating to costs, earnings or other monetary factors as is, for use instead of the retail prices index, prescribed in regulations made by the Department of Justice.
>
> (3) In sub-paragraph (2), "the retail prices index" means the general index (for all items) published by the Statistics Board or, if that index is not published for a relevant month, any substituted index or index figures published by that Board.

3.3 The Damages (Process for Setting Rate of Return) Regulations (Northern Ireland) 2024 were made under paragraph 9(2)(b) above to prescribe average weekly earnings as the published information for use instead of the retail prices index. Regulation 3 of those Regulations reads as follows:

> 3. (1) Average Weekly Earnings is prescribed as the published information for use instead of the retail prices index for the purposes of paragraph 9(2) of Schedule C1 to the Damages Act 1996.
>
> (2) In paragraph (1), "Average Weekly Earnings" means the measure of short-term average earnings used to measure changes in earnings over time—

(a) published periodically by the Statistics Board[3] under the title "Average weekly earnings in Great Britain"[4];

(b) based on that body's Monthly Wages and Salaries Survey[5]; and

(c) which relates to the whole of the economy of Great Britain.

3.4 As it stands, therefore, the discount rate for Northern Ireland must take account of inflation with reference to average weekly earnings (AWE). The Department, with the agreement of the Assembly, could in future make further regulations to replace AWE with another measure, but such a measure would have to be a single, unadjusted index: an adjustment to an index (such as CPI+1%) is not possible.

3.5 The experience of the 2024 review of the discount rate has demonstrated that, under the current legislative framework, the Department does not have the power to prescribe an adjusted measure, giving rise to a number of issues:

- RPI is no longer a useful proxy for damages inflation;
- the option to prescribe 'some published information' as an alternative to RPI only allows for an unadjusted existing index to be used;
- the Department has to make a choice between prescribing an index of prices inflation or an index of earnings inflation, whereas damages inflation is likely to fall somewhere between prices and earnings inflation.

3.6 We are seeking views on whether, and if so how, the legislation ought to be changed to allow more flexibility in how the impact of inflation is to be allowed for by the Government Actuary when setting the discount rate for Northern Ireland.

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[3] The Statistics Board was established by section 1(1) of the Statistics and Registration Service Act 2007 (c. 18).

[4] The relevant bulletin is made available each month on the following webpage: https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours.

[5] The Monthly Wages and Salaries Survey is conducted under the Statistics of Trade Act 1947 (c. 39).

4. Options

4.1 Following the experience of the 2024 review of the personal injury discount rate for Northern Ireland, the Department considers that the legislation may currently provide insufficient scope to properly reflect damages inflation.

> **Consultation Question 1**
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> **In principle, should the Damages Act provide more flexibility in relation to how the impact of inflation is to be taken into account by the Government Actuary when setting the personal injury discount rate for Northern Ireland? Please give reasons for your answer.**

4.2 If more flexibility is to be provided, consideration needs to be given to how this should be achieved, and there are various options for doing so, based on the extent to which any adjustment to the prescribed inflation measure ought to be a decision for the Department and the Assembly or the rate-setter (ordinarily the Government Actuary).

4.3 One option would be to prescribe in the 1996 Act a different measure than RPI (for example, the Consumer Prices Index) but give the rate-setter the ability to make a % adjustment to it, rather than this adjustment being prescribed in legislation. (The power for the Department to prescribe a different measure would be retained.) This option would have the advantage of retaining some clarity and transparency in the primary legislation about which index will be used but give a degree of flexibility to the rate-setter by allowing an adjustment to be made to that index without any need for legislation. This would allow the use, for example, of CPI+0.5% or CPI+1%, which would be similar to the approach used by the Lord Chancellor for last year's review of the rate for England and Wales.

4.4 CPI, of course, is not the only index that could be prescribed, and the Department is gathering views in this consultation as to the most appropriate index. First, there is the choice between a prices index (for example, CPI or CPIH) or an earnings index (for example, ASHE or AWE). Although an earnings measure may, on the face of it, appear more obvious due to the current prescription of (an unadjusted) AWE, that index was determined within the constraints of the current legislation, and, in the context of a different legislative provision, there would be several reasons in favour of prescribing a prices inflation index. For example, prices indices are more robust than the earnings measures, which are based on survey data (in the case of ASHE) or a sample of businesses (in the case of AWE). More particularly, from an investment return modelling perspective, a prices index is preferable as it is more common to set investment returns relative to prices inflation. Also, there are no readily available investments that reference an earnings index and, therefore, there is no observable market view of future earnings inflation. On balance, the Department's view is that a prices index is, therefore, preferable to an earnings index.

4.5 That leads to a choice between the price indices CPI and CPIH. In favour of CPIH, there will be alignment from 2030 of RPI with CPIH and since RPI is the index currently referenced by the index-linked gilts currently in issuance, it will be easier to get a market-observable view of future CPIH than CPI. CPIH is also the headline inflation rate used by the Office of National Statistics (ONS). In favour of CPI, is its longer history than CPIH and its use for the Bank of England inflation target, meaning that it is more commonly referenced in contracts with an inflation measure. Therefore, there is an argument that heads of loss linked to prices inflation could be more likely to increase in line with CPI than CPIH.

4.6 A second option would be to prescribe both an index *and* a percentage-point adjustment in legislation, but with a power for the Department to amend either or both, prior to each review as necessary, by secondary legislation. The Department would seek advice from GAD about the appropriate adjustment to prescribe. This would mean full transparency and certainty in the legislation in advance of a review being carried out but could require regular amendment of the legislation.

Consultation Question 2

If more flexibility is to be provided, how should this be achieved?

(a) Prescribe an index, such as the consumer prices index, in the primary legislation, with the ability for the rate-setter to make an adjustment to that index;

(b) Prescribe an index, such as the consumer prices index, and an adjustment in the primary legislation, with the ability for the Department to amend the adjustment; or

(c) Another way (please explain)?

Please give reasons for your answer.

Consultation Question 3

Which is the best inflation index to prescribe in the legislation: CPI, CPIH or another index? Please explain why.

4.7 For both suggested options, whether the Government Actuary is determining the appropriate adjustment to make to a prescribed index or this is prescribed in the legislation, it will be necessary to understand as best as possible the likely balance of inflation affecting an award of damages being invested by the 'hypothetical claimant investor'.

4.8 As noted above, the expert panel constituted to advise the Lord Chancellor in the 2024 review of the discount rate for England and Wales estimated that earnings-related damages are 65–85% of claimants' overall lump-sum damages.[6] This was based on consideration of evidence provided to the review by stakeholders in response to a call for evidence.[7] The Department considers that the balance of inflation affecting damages in Northern Ireland is

[6] See *Review of the Personal Injury Discount Rate: Expert Panel Report to the Lord Chancellor* (2024), p. 28. Available at https://www.gov.uk/guidance/personal-injury-discount-rate.

[7] See Ministry of Justice (2024), *Setting the Personal Injury Discount Rate: A call for evidence. Government response*. Available at https://www.gov.uk/government/calls-for-evidence/setting-the-personal-injury-discount-rate.

likely to be broadly the same as that affecting damages in England and Wales, but welcomes the views of consultees on this issue.

Consultation Question 4

Do you agree that the balance of inflation affecting lump-sum awards of damages in Northern Ireland is likely to be the same as that experienced in England and Wales? Please provide evidence for your view either way.

5. Equality screening and rural proofing

5.1 The policy proposal to provide more flexibility for making allowance for the impact of inflation when setting the discount rate has been screened for any impact on equality of opportunity and a rural needs impact assessment has been carried out.

5.2 The equality screening concluded that there would be no significant implications for equality of opportunity and therefore an equality impact assessment is not required. The rural needs impact assessment did not identify any specific rural needs.

6. Next steps

6.1 Primary legislation, to amend the Damages Act 1996, would be required to make any change to how the impact of inflation is allowed for when setting the personal injury discount rate for Northern Ireland.

6.2 There is no available legislative vehicle for such an amendment within the Department's legislative programme for the current mandate, so any legislation would be taken forward in the next mandate, subject to the views of an incoming Minister of Justice and Executive.