



Jersey

DAMAGES (JERSEY) LAW 2019

Official Consolidated Version

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DAMAGES (JERSEY) LAW 2019

A LAW to make provision for compensation payments in personal injury cases in relation to the application of a discount rate and periodical payment orders.

Commencement [[see endnotes](#)]

1 Interpretation

In this Law –

“commencement date” means the date that this Law comes into force under Article 7;

“discount rate” means the rate of return from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury;

“periodical payment order” means an order under Article 4(2).

2 Discount rate

- (1) If a court makes an award of damages for future pecuniary loss, in calculating the award it must apply the discount rate subject to Article 6.
- (2) The discount rate is –
 - (a) 0.5% if, at the time the first court order in an action for damages is made, future pecuniary loss is expected to be incurred for a period not exceeding 20 years; or
 - (b) 1.8% if, at the time the first court order in an action for damages is made, future pecuniary loss is expected to be incurred for a period exceeding 20 years.
- (3) The Chief Minister may, after consultation with the Bailiff, by Order amend the discount rate, subject to paragraph (7).
- (4) The States may, by Regulations, amend this Law subject to paragraphs (6) and (7) to make such provision as the States think expedient in relation to the discount rate, including making consequential amendments to this Law and making provision for any matter to be included in a Schedule.
- (5) Without prejudice to the generality of paragraph (4), Regulations may, in particular, make provision for –

- (a) the process for determining the discount rate, including any requirements for consultation and who may determine the rate;
 - (b) the creation of bodies who must be consulted during the process for determining the discount rate;
 - (c) different discount rates to be specified for different types of case;
 - (d) circumstances, of whatever nature, to be taken into account in determining the discount rate, including circumstances relating to such matters as economic sustainability, affordability, and inflation, including wage inflation;
 - (e) different circumstances to be taken into account in different types of case;
 - (f) the making of rules of Court.
- (6) In making provision in Regulations for determining the discount rate, the States must take into account the return to be expected from a lower risk diversified portfolio of investments.
- (7) The discount rate must not be amended to a percentage less than 0%.

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4 Periodical payment orders

- (1) In respect of personal injury claims this Article is without prejudice to a court's power under customary law before the commencement date to make an award of damages other than by way of a lump sum before that date, but after the commencement date this Law has effect notwithstanding any customary law.
- (2) A court awarding damages for future pecuniary loss in respect of personal injury may make an order that the damages must wholly or partly take the form of periodical payments.
- (3) A court may not make a periodical payment order unless it is satisfied that the continuity of payment under the order is reasonably secure.
- (4) For the purposes of paragraph (3), the continuity of payment under a periodical payment order is reasonably secure if –
 - (a) the order is enforceable against a Minister;
 - (b) it is protected by a scheme, statutory or otherwise, established under any jurisdiction, such scheme being one which the court is satisfied gives protection equivalent to the scheme established under section 213 of the Financial Services and Markets Act 2000 of the United Kingdom; or
 - (c) it is subject to a guarantee given under Article 5(2) by the Minister for Treasury and Resources in respect of that particular order.
- (5) A periodical payment order may include provision for any of the following –
 - (a) requiring the party responsible for the payments to use a method (specified in the order or to be selected by the party) under which

- the continuity of payment is reasonably secure under paragraph (4);
- (b) about how the payments are to be made;
 - (c) requiring the party responsible for the payments to take specified action to secure continuity of payment.
- (6) Where a person has a right to receive payments under a periodical payment order, 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) the court must not approve an assignment or charge unless satisfied that it is necessary;
 - (b) a purported assignment or charge, or agreement to assign or charge, is void unless approved by the court.
- (7) Any alteration of the method of payment under a periodical payment order is a breach of the order unless the alteration of method has been approved by the court.
- (8) A person who has an interest in the making or receipt of a payment under a periodical payment order may apply to the court for a variation of the provisions of the order on the ground that there has been a material change of circumstances since the order was made.
- (9) For the purposes of paragraph (8) a person may have such an interest if the person –
- (a) is the recipient of the payment;
 - (b) is the person making the payment; or
 - (c) otherwise has an interest in the payment.
- (10) For the purposes of paragraph (8), the States may, by Regulations, make provision for determining when there has been a material change of circumstances and when an application can be made under that paragraph, including, without prejudice to the generality of the foregoing, provision for –
- (a) factors to be taken into account in determining whether there has been a material change of circumstances;
 - (b) any period of time that must elapse before an application or subsequent application is made, with reference to such factors as may be specified in the Regulations, including the nature of any change of circumstances or otherwise;
 - (c) when the leave of the Royal Court is required to make an application, whether in all circumstances or in such circumstances as may be specified in the Regulations;
 - (d) when the provisions of a periodical payment order may or must limit the circumstances in which an application under paragraph (8) may be made.
- (11) The powers to make Rules of Court under Article 13 of the [Royal Court \(Jersey\) Law 1948](#) includes powers to make Rules with respect to the varying of periodical payment orders.

5 Guarantees for periodical payment orders made against public bodies

- (1) In this Article “public body” means any of the following –
 - (a) the States Greffe;
 - (b) a committee or other body established by a resolution of the States or by, or in accordance with, standing orders of the States Assembly;
 - (c) an administration of the States;
 - (d) a Department referred to in Article 1 of the [Departments of the Judiciary and the Legislature \(Jersey\) Law 1965](#);
 - (e) the States of Jersey Police Force;
 - (f) any body (whether incorporated or unincorporated) prescribed by Order made by the Minister of Treasury and Resources, such body being one which appears to the Minister to exercise functions of a public nature.
- (2) The Minister for Treasury and Resources may, in the name of the States, guarantee the payments to be made by a public body under any particular periodical payment order under Article 4.
- (3) A guarantee under paragraph (2) is to be given on such terms as the Minister for Treasury and Resources may determine.
- (4) Any sums required by the Minister for Treasury and Resources for fulfilling a guarantee under this Article are to be defrayed out of the annual income of the States and any sums received by the Minister by way of reimbursement or interest shall be paid into the consolidated fund.
- (5) Notwithstanding Regulation 9(7) of the Public Finances (Transitional Provisions) (No. 2) (Jersey) Regulations 2005, borrowing by the States is not to be taken to include the giving of a guarantee under this Article.

6 Actions for damages commenced prior to the commencement of this Law

- (1) Subject to paragraph (3), in an action for damages started before the commencement date –
 - (a) the discount rate applies to an award of damages made by a court (whether or not following an appeal) on or after the commencement date unless it appears to the court that to apply the rate would be contrary to the rights of a party to the action under Article 6 of the European Convention on Human Rights; and
 - (b) a periodical payment order may be made by a court (whether or not following an appeal) on or after the commencement date.
- (2) If, in respect of a court order made before the commencement date, there is no subsisting right of appeal on the commencement date, a court has no power to make a periodical payment order or apply the discount rate.
- (3) For the avoidance of doubt, the power of a court under this Law to apply the discount rate or to make a periodical payment order does not itself give rise to a right of appeal in respect of an action for damages started before the commencement date.

7 Citation and commencement

This Law may be cited as the Damages (Jersey) Law 2019 and comes into force 7 days after the day it is registered.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Damages (Jersey) Law 2019	L.5/2019	3 May 2019	P.131/2018

◦Projets available at www.statesassembly.gov.je

Table of Endnote References

¹ Article 3 *spent, omitted*