

PERIODICAL PAYMENT OR LUMP SUM

AN INTRODUCTION

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# DAMAGES (INVESTMENT RETURNS AND PERIODICAL PAYMENTS) (SCOTLAND) BILL 2018

- AMENDS THE DAMAGES ACT 1996
- NEW SCOTTISH METHOD OF SETTING THE ASSUMED RATE OF RETURN ON DAMAGES INVESTED
- GIVES SCOTTISH COURTS POWER TO MAKE PPO WHERE ONLY ONE PARTY SEEKS IT OR NEITHER PARTY SEEKS IT
- FUTURE PECUNIARY LOSS – MUST CONSIDER PPO

# SUCCESS FEE AGREEMENTS AND FUTURE LOSS

- CIVIL LITIGATION (EXPENSES AND GROUP PROCEEDINGS) (SCOTLAND) ACT 2018
- SECTION 6 – IF FEE INCLUDES A PORTION OF FUTURE DAMAGES THEN COURT OR INDEPENDENT ACTUARY HAS TO CERTIFY THAT LUMP SUM IN THE BEST INTERESTS OF RECIPIENT

# ASSUMED RETURN ON DAMAGES INVESTED THE DISCOUNT RATE

- AFTER TAX
- NET OF INFLATION (EARNINGS OR PRICES)
- NET OF COST OF INVESTMENT ADVICE

# PROCESS FOR SETTING RATE OF RETURN

- COURT MUST TAKE INTO ACCOUNT THE RATE SET BY OFFICIAL RATE ASSESSOR
- OFFICIAL RATE – ASSESSOR - THE GOVERNMENT ACTUARY
- PROCESS INVOLVES SET CRITERIA
- REVIEW - EVERY THREE YEARS

# Key weakness of the lump sum

- Must estimate life expectancy
- 99.99% chance it is wrong

# ADVANTAGES OF PPO

- INFLATION NOT AN ISSUE – INDEXATION [NEW 2D]
- TAX NOT AN ISSUE [ss 731 – 734 Income Tax Act 2005]
- INVESTMENT ADVICE NOT NECESSARY

# DISADVANTAGES OF PPO

- SECURITY OF PAYMENT [NEW 2C ]
- POSSIBILITY OF VARIATION/SUSPENSION [NEW 2E – 2I]
- INFLEXIBLE
- STRINGS ATTACHED