



Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019

2019 asp 4

PART 2

PERIODICAL PAYMENTS OF DAMAGES

PROSPECTIVE

7 Protection on occurrence of insolvency

(1) After section 4A of the Damages Act 1996 (see section 6 of this Act) there is inserted—

“4B Periodical payments for future pecuniary loss: insolvency

- (1) A trust deed which provides for the transfer to the trustee of a right to receive relevant periodical payments as described in subsection (4) cannot have protected status by virtue of section 163(1) of the Bankruptcy Act.
- (2) Under a protected trust deed as mentioned in section 163(1) of the Bankruptcy Act, a person cannot be required to pay to the trustee by way of a contribution from income the portion of periodical payments which falls within the description in subsection (5).
- (3) Where the estate of a person who has a right to receive periodical payments is sequestrated—
 - (a) in the operation of the Bankruptcy Act—
 - (i) relevant periodical payments as described in subsection (4) are to be treated as income,
 - (ii) neither the right to receive relevant periodical payments as described in subsection (4), nor any property or arrangement designed to protect their continuity, is to be regarded as forming part of the person's estate,

Status: This version of this provision is prospective.

Changes to legislation: There are currently no known outstanding effects for the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019, Section 7. (See end of Document for details)

- (b) a debtor contribution order under section 90(1) of the Bankruptcy Act may not require the portion of periodical payments which falls within the description in subsection (5) to be paid to the trustee.
 - (4) The references in subsections (1) and (3)(a) to relevant periodical payments are to periodical payments awarded or agreed, or to periodical payments in so far as awarded or agreed, as damages for future pecuniary loss.
 - (5) The portion with respect to subsections (2) and (3)(b) is the portion of periodical payments which is identified, in the order or agreement under which the periodical payments in total are made, as relating wholly to expenditure likely to be incurred by or for the person as a result of the personal injury concerned.
 - (6) Subsections (1) to (3) do not apply if—
 - (a) the right to receive the periodical payments has been assigned since the order or agreement giving rise to the right was made, and
 - (b) the person who has the right to receive the periodical payments is not spending them for the benefit of the person who suffered the injury in respect of which that order or agreement was made.
 - (7) Subsections (1) to (3) do not apply if the order or agreement in question was made before the day on which section 7 of the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019 comes into force.
 - (8) For the purposes of this section, periodical payments are payments of that type made, or to be made, by virtue of (including as varied)—
 - (a) an order made under section 2,
 - (b) an agreement made pursuant to such an order, or
 - (c) an agreement made to settle a claim or action for damages in respect of personal injury.
 - (9) In this section, “the Bankruptcy Act” means the Bankruptcy (Scotland) Act 2016.”.
- (2) In section 78 of the Bankruptcy (Scotland) Act 2016, in subsection (2)—
- (a) the words “section 88” become paragraph (a),
 - (b) after that paragraph (as so numbered) there is inserted “, and
 - (b) section 4B(3)(a) of the Damages Act 1996.”.

Status:

This version of this provision is prospective.

Changes to legislation:

There are currently no known outstanding effects for the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019, Section 7.