



# Damages Act 1996

## 1996 CHAPTER 48

An Act to make new provision in relation to damages for personal injury, including injury resulting in death. [24th July 1996]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Extent Information

**E1** Act extends to UK except s. 3 which extends to E.W. & N.I. only see [s. 8\(2\)](#)

### Modifications etc. (not altering text)

**C1** [Act](#): transfer of functions (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), [Sch. 17 para. 15](#) (with arts. 28-31)

### Commencement Information

**I1** Act wholly in force at 24. 9. 1996 see [s. 8\(3\)](#)

## 1 Assumed rate of return on investment of damages.

- (1) In determining the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury the court shall, subject to and in accordance with rules of court made for the purposes of this section, take into account such rate of return (if any) as may from time to time be prescribed by an order made by the Lord Chancellor.
- (2) Subsection (1) above shall not however prevent the court taking a different rate of return into account if any party to the proceedings shows that it is more appropriate in the case in question.
- (3) An order under subsection (1) above may prescribe different rates of return for different classes of case.

*Status: Point in time view as at 12/04/2010.*

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- (4) Before making an order under subsection (1) above the Lord Chancellor shall consult the Government Actuary and the Treasury; and any order under that subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F1</sup>(5) In the application of this section to Scotland—
- (a) for the reference to the Lord Chancellor in subsections (1) and (4) there is substituted a reference to the Scottish Ministers; and
  - (b) in subsection (4)—
    - (i) “and the Treasury” is omitted; and
    - (ii) for “either House of Parliament” there is substituted “the Scottish Parliament”.]
- [<sup>F2</sup>(6) In the application of this section to Northern Ireland—
- (a) for the reference to the Lord Chancellor in subsections (1) and (4) there is substituted a reference to the Department of Justice in Northern Ireland; and
  - (b) in subsection (4)—
    - (i) for the reference to the Treasury there is substituted a reference to the Department of Finance and Personnel in Northern Ireland; and
    - (ii) for “by statutory instrument” to “Parliament” there is substituted “by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979, and is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954”.]

#### Textual Amendments

- F1** S. 1(5) substituted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 126(2)(3)**
- F2** S. 1(6) inserted (12.4.2010) by **The Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), Sch. 18 para. 55** (with arts. 28-31)

## 2 [<sup>F3</sup>Periodical payments **E+W+N.I.**

- (1) A court awarding damages for future pecuniary loss in respect of personal injury—
- (a) may order that the damages are wholly or partly to take the form of periodical payments, and
  - (b) shall consider whether to make that order.
- (2) A court awarding other damages in respect of personal injury may, if the parties consent, order that the damages are wholly or partly to take the form of periodical payments.
- (3) A court may not make an order for periodical payments unless satisfied that the continuity of payment under the order is reasonably secure.
- (4) For the purpose of subsection (3) the continuity of payment under an order is reasonably secure if—
- (a) it is protected by a guarantee given under section 6 of or the Schedule to this Act,

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- (b) it is protected by a scheme under section 213 of the Financial Services and Markets Act 2000 (compensation) (whether or not as modified by section 4 of this Act), or
  - (c) the source of payment is a government or health service body.
- (5) An order for periodical payments may include provision—
  - (a) requiring the party responsible for the payments to use a method (selected or to be selected by him) under which the continuity of payment is reasonably secure by virtue of subsection (4);
  - (b) about how the payments are to be made, if not by a method under which the continuity of payment is reasonably secure by virtue of subsection (4);
  - (c) requiring the party responsible for the payments to take specified action to secure continuity of payment, where continuity is not reasonably secure by virtue of subsection (4);
  - (d) enabling a party to apply for a variation of provision included under paragraph (a), (b) or (c).
- (6) Where a person has a right to receive payments under an order for periodical payments, 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) a court shall not approve an assignment or charge unless satisfied that special circumstances make it necessary, and
  - (b) a purported assignment or charge, or agreement to assign or charge, is void unless approved by the court.
- (7) Where an order is made for periodical payments, an alteration of the method by which the payments are made shall be treated as a breach of the order (whether or not the method was specified under subsection (5)(b)) unless—
  - (a) the court which made the order declares its satisfaction that the continuity of payment under the new method is reasonably secure,
  - (b) the new method is protected by a guarantee given under section 6 of or the Schedule to this Act,
  - (c) the new method is protected by a scheme under section 213 of the Financial Services and Markets Act 2000 (compensation) (whether or not as modified by section 4 of this Act), or
  - (d) the source of payment under the new method is a government or health service body.
- (8) An order for periodical payments shall be treated as providing for the amount of payments to vary by reference to the retail prices index (within the meaning of section 833(2) of the Income and Corporation Taxes Act 1988) at such times, and in such a manner, as may be determined by or in accordance with Civil Procedure Rules.
- (9) But an order for periodical payments may include provision—
  - (a) disapplying subsection (8), or
  - (b) modifying the effect of subsection (8).

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### Textual Amendments

**F3** Ss. 2-2B substituted for s. 2 (E.W.N.I.) (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **ss. 100(1)**, 110(1); [S.I. 2005/910, art. 3\(w\)](#); [S.I. 2005/910, art. 3\(w\)](#) (with savings and transitional provisions in [S.I. 2005/911, arts. 1, 11](#))

### Modifications etc. (not altering text)

**C2** S. 2(3)-(9) applied (with application in accordance with art. 1(5) of the amending S.I.) by [The Damages \(Variation of Periodical Payments\) Order 2005 \(S.I. 2005/841\)](#), arts. 1(1), **13**

**C3** S. 2 excluded (E.W.) (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **s. 101(4)(d)(e)**, 110(1); [S.I. 2005/910, art. 3\(w\)](#)

## 2A Periodical payments: supplementary

- (1) Civil Procedure Rules may require a court to take specified matters into account in considering—
  - (a) whether to order periodical payments;
  - (b) the security of the continuity of payment;
  - (c) whether to approve an assignment or charge.
- (2) For the purposes of section 2(4)(c) and (7)(d) “government or health service body” means a body designated as a government body or a health service body by order made by the Lord Chancellor.
- (3) An order under subsection (2)—
  - (a) shall be made by statutory instrument, and
  - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Section 2(6) is without prejudice to a person’s power to assign a right to the scheme manager established under section 212 of the Financial Services and Markets Act 2000.
- (5) In section 2 “damages” includes an interim payment which a court orders a defendant to make to a claimant.
- (6) In the application of this section [<sup>F4</sup>and section 2] to Northern Ireland—
  - (a) a reference to Civil Procedure Rules shall be taken as a reference to rules of court, <sup>F5</sup>...
  - (b) a reference to a claimant shall be taken as a reference to a plaintiff.
  - (c) [ a reference to the Lord Chancellor shall be taken as a reference to the <sup>F6</sup>Department of Justice in Northern Ireland, and
  - (d) for subsection (3)(a) and (b) of this section there is substituted “shall be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979; and is subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954”.]
- (7) Section 2 is without prejudice to any power exercisable apart from that section.

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### Textual Amendments

- F3** Ss. 2-2B substituted for s. 2 (E.W.N.I.) (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **ss. 100(1)**, 110(1); S.I. 2005/910, art. 3(w); S.I. 2005/910, art. 3(w) (with savings and transitional provisions in S.I. 2005/911, arts. 1, 11)
- F4** Words in s. 2A(6) inserted (N.I.) (7.7.2005) by [The Law Reform \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2005 \(S.I. 2005/1452\)](#), arts. 1(4), **23**
- F5** Word in s. 2A(6)(a) omitted (12.4.2010) by virtue of [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 56(a)** (with arts. 28-31)
- F6** S. 2A(6)(c)(d) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 56(b)** (with arts. 28-31)

## 2B Variation of orders and settlements

- (1) The Lord Chancellor may by order enable a court which has made an order for periodical payments to vary the order in specified circumstances (otherwise than in accordance with section 2(5)(d)).
- (2) The Lord Chancellor may by order enable a court in specified circumstances to vary the terms on which a claim or action for damages for personal injury is settled by agreement between the parties if the agreement—
  - (a) provides for periodical payments, and
  - (b) expressly permits a party to apply to a court for variation in those circumstances.
- (3) An order under this section may make provision—
  - (a) which operates wholly or partly by reference to a condition or other term of the court's order or of the agreement;
  - (b) about the nature of an order which may be made by a court on a variation;
  - (c) about the matters to be taken into account on considering variation;
  - (d) of a kind that could be made by Civil Procedure Rules or, in relation to Northern Ireland, rules of court (and which may be expressed to be with or without prejudice to the power to make those rules).
- (4) An order under this section may apply (with or without modification) or amend an enactment about provisional or further damages.
- (5) An order under this section shall be subject to any order under section 1 of the Courts and Legal Services Act 1990 (allocation between High Court and county courts).
- (6) An order under this section—
  - (a) shall be made by statutory instrument,
  - (b) may not be made unless the Lord Chancellor has consulted such persons as he thinks appropriate,
  - (c) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament, and
  - (d) may include transitional, consequential or incidental provision.
- (7) In subsection (4)—

[ In the application of this section to Northern Ireland—  
<sup>F7</sup>(8)

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- (a) a reference to the Lord Chancellor shall be taken as a reference to the Department of Justice in Northern Ireland;
  - (b) in subsection (6)(a) for “statutory instrument” substitute “statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979”;
  - (c) in subsection (6)(c) for “each House of Parliament” substitute “the Northern Ireland Assembly”;
  - (d) section 41(3) of the Interpretation Act (Northern Ireland) 1954 applies for the purposes of subsection (6)(c) in relation to the laying of a draft as it applies in relation to the laying of a statutory document under an enactment.]
- “provisional damages” means damages awarded by virtue of subsection (2) (a) of section 32A of the [<sup>F8</sup>Senior Courts Act 1981] or section 51 of the County Courts Act 1984 (or, in relation to Northern Ireland, paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982), and
- “further damages” means damages awarded by virtue of subsection (2)(b) of either of those sections (or, in relation to Northern Ireland, paragraph 10(2) (b) of Schedule 6 to the Administration of Justice Act 1982).]

#### Textual Amendments

- F3** Ss. 2-2B substituted for s. 2 (E.W.N.I.) (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **ss. 100(1)**, 110(1); S.I. 2005/910, art. 3(w); S.I. 2005/910, art. 3(w) (with savings and transitional provisions in S.I. 2005/911, arts. 1, 11)
- F7** S. 2B(8) inserted (12.4.2010) by [The Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), **Sch. 18 para. 57** (with arts. 28-31)
- F8** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), s. 148(1), **Sch. 11 para. 1(2)**; S.I. 2009/1604, art. 2(d); S.I. 2009/1604, art. 2(d)

### 3 Provisional damages and fatal accident claims.

- (1) This section applies where a person—
  - (a) is awarded provisional damages; and
  - (b) subsequently dies as a result of the act or omission which gave rise to the cause of action for which the damages were awarded.
- (2) The award of the provisional damages shall not operate as a bar to an action in respect of that person’s death under the <sup>M1</sup>Fatal Accidents Act 1976.
- (3) Such part (if any) of—
  - (a) the provisional damages; and
  - (b) any further damages awarded to the person in question before his death,
 as was intended to compensate him for pecuniary loss in a period which in the event falls after his death shall be taken into account in assessing the amount of any loss of support suffered by the person or persons for whose benefit the action under the Fatal Accidents Act 1976 is brought.
- (4) No award of further damages made in respect of that person after his death shall include any amount for loss of income in respect of any period after his death.
- (5) In this section “provisional damages” means damages awarded by virtue of subsection (2)(a) of section 32A of the <sup>M2</sup>[<sup>F8</sup>Senior Courts Act 1981] or section 51

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of the <sup>M3</sup>County Courts Act 1984 and “further damages” means damages awarded by virtue of subsection (2)(b) of either of those sections.

- (6) Subsection (2) above applies whether the award of provisional damages was before or after the coming into force of that subsection; and subsections (3) and (4) apply to any award of damages under the 1976 Act or, as the case may be, further damages after the coming into force of those subsections.
- (7) In the application of this section to Northern Ireland—
- (a) for references to the Fatal Accidents Act 1976 there shall be substituted references to the <sup>M4</sup>Fatal Accidents (Northern Ireland) Order 1977;
  - (b) for the reference to subsection (2)(a) and (b) of section 32A of the [<sup>F8</sup>Senior Courts Act 1981] and section 51 of the County Courts Act 1984 there shall be substituted a reference to paragraph 10(2)(a) and (b) of Schedule 6 to the <sup>M5</sup>Administration of Justice Act 1982.

#### Textual Amendments

- F8** Words in Act substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 11 para. 1\(2\)](#); [S.I. 2009/1604, art. 2\(d\)](#); [S.I. 2009/1604, art. 2\(d\)](#)

#### Marginal Citations

- M1** 1976 c. 30  
**M2** 1981 c. 54  
**M3** 1984 c. 28  
**M4** [S.I. 1977/1251 \(N.I. 18\)](#)  
**M5** 1982 c. 53

#### [<sup>F9</sup>4] **Enhanced protection for periodical payments**

- (1) Subsection (2) applies where—
- (a) a person has a right to receive periodical payments, and
  - (b) his right is protected by a scheme under section 213 of the Financial Services and Markets Act 2000 (compensation), but only as to part of the payments.
- (2) The protection provided by the scheme shall extend by virtue of this section to the whole of the payments.
- (3) Subsection (4) applies where—
- (a) one person (“the claimant”) has a right to receive periodical payments from another person (“the defendant”),
  - (b) a third person (“the insurer”) is required by or in pursuance of an arrangement entered into with the defendant (whether or not together with other persons and whether before or after the creation of the claimant’s right) to make payments in satisfaction of the claimant’s right or for the purpose of enabling it to be satisfied, and
  - (c) the claimant’s right to receive the payments would be wholly or partly protected by a scheme under section 213 of the Financial Services and Markets Act 2000 if it arose from an arrangement of the same kind as that mentioned in paragraph (b) but made between the claimant and the insurer.
- (4) For the purposes of the scheme under section 213 of that Act—

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- (a) the claimant shall be treated as having a right to receive the payments from the insurer under an arrangement of the same kind as that mentioned in subsection (3)(b),
  - (b) the protection under the scheme in respect of those payments shall extend by virtue of this section to the whole of the payments, and
  - (c) no person other than the claimant shall be entitled to protection under the scheme in respect of the payments.
- (5) In this section “periodical payments” means periodical payments made pursuant to—
- (a) an order of a court in so far as it is made in reliance on section 2 above (including an order as varied), or
  - (b) an agreement in so far as it settles a claim or action for damages in respect of personal injury (including an agreement as varied).
- (6) In subsection (5)(b) the reference to an agreement in so far as it settles a claim or action for damages in respect of personal injury includes a reference to an undertaking given by the Motor Insurers' Bureau (being the company of that name incorporated on 14th June 1946 under the Companies Act 1929), or an Article 75 insurer under the Bureau's Articles of Association, in relation to a claim or action in respect of personal injury.]

#### Textual Amendments

- F9** S. 4 substituted for ss. 4, 5 (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **ss. 101(1)**, 110(1); [S.I. 2005/910, art. 3\(w\)](#); [S.I. 2005/910, art. 3\(w\)](#) (with savings and transitional provisions in [S.I. 2005/911, arts. 1, 13, 14](#))

#### **F9** 5 **Meaning of structured settlement.**

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#### Textual Amendments

- F9** S. 4 substituted for ss. 4, 5 (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **ss. 101(1)**, 110(1); [S.I. 2005/910, art. 3\(w\)](#); [S.I. 2005/910, art. 3\(w\)](#) (with savings and transitional provisions in [S.I. 2005/911, arts. 1, 13, 14](#))

#### **6 Guarantees for public sector settlements.**

- (1) This section applies where—
- (a) a claim or action for damages for personal injury is settled [<sup>F10</sup>on terms whereby the damages are to consist wholly or partly of periodical payments]; or
  - (b) a court awarding damages for personal injury makes an order incorporating such terms.
- (2) If it appears to a Minister of the Crown that the payments are to be made by a body in relation to which he has, by virtue of this section, power to do so, he may guarantee the payments to be made under the agreement or order.
- (3) The bodies in relation to which a Minister may give such a guarantee shall, subject to subsection (4) below, be such bodies as are designated in relation to the relevant



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government department by guidelines agreed upon between that department and the Treasury.

- (4) A guarantee purporting to be given by a Minister under this section shall not be invalidated by any failure on his part to act in accordance with such guidelines as are mentioned in subsection (3) above.
  - (5) A guarantee under this section shall be given on such terms as the Minister concerned may determine but those terms shall in every case require the body in question to reimburse the Minister, with interest, for any sums paid by him in fulfilment of the guarantee.
  - (6) Any sums required by a Minister for fulfilling a guarantee under this section shall be defrayed out of money provided by Parliament and any sums received by him by way of reimbursement or interest shall be paid into the Consolidated Fund.
  - (7) A Minister who has given one or more guarantees under this section shall, as soon as possible after the end of each financial year, lay before each House of Parliament a statement showing what liabilities are outstanding in respect of the guarantees in that year, what sums have been paid in that year in fulfilment of the guarantees and what sums (including interest) have been recovered in that year in respect of the guarantees or are still owing.
  - (8) In this section “government department” means any department of Her Majesty’s government in the United Kingdom and for the purposes of this section a government department is a relevant department in relation to a Minister if he has responsibilities in respect of that department.
- [<sup>F11</sup>(8A) In the application of subsection (3) above to Scotland, for the words from “guidelines” to the end there shall be substituted “the Minister”.]
- [<sup>F12</sup>(8B) In the application of this section to Scotland, “relevant government department” shall be read as if it was a reference to any part of the Scottish Administration and subsection (8) shall cease to have effect.]
- (9) The Schedule to this Act has effect for conferring corresponding powers on Northern Ireland departments.

#### Textual Amendments

- F10** Words in s. 6(1)(a) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), **ss. 101(2)**, 110(1); [S.I. 2005/910](#), [art. 3\(w\)](#); [S.I. 2005/910](#), [art. 3\(w\)](#)
- F11** S. 6(8A) inserted (1.7.1999) by [1998 c. 46](#), s. 125, **Sch. 8**, para. 34 (with s. 126(3)-(11)); [S.I. 1998/3178](#), **art. 2(1)**,
- F12** S. 6(8B) inserted (1.7.1999) by [S.I. 1999/1820](#), [art. 4](#), **Sch. 2 Pt. 1 para. 126(3)**

## 7 Interpretation.

- (1) Subject to subsection (2) below, in this Act “personal injury” includes any disease and any impairment of a person’s physical or mental condition and references to a claim or action for personal injury include references to such a claim or action brought by virtue of the <sup>M6</sup>Law Reform (Miscellaneous Provisions) Act 1934 and to a claim or action brought by virtue of the <sup>M7</sup>Fatal Accidents Act 1976.

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- (2) In the application of this Act to Scotland “personal injury” has the meaning given by section 10(1) of the <sup>M8</sup>Damages (Scotland) Act 1976.
- (3) In the application of subsection (1) above to Northern Ireland for the references to the Law Reform (Miscellaneous Provisions) Act 1934 and to the Fatal Accidents Act 1976 there shall be substituted respectively references to the <sup>M9</sup>Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 and the <sup>M10</sup>Fatal Accidents (Northern Ireland) Order 1977.

#### **Marginal Citations**

- M6** 1934 c. 41  
**M7** 1976 c. 30  
**M8** 1976 c. 13  
**M9** 1937 c. 9(N.I.)  
**M10** S.I. 1977/1251 (N.I. 18)

#### **8 Short title, extent and commencement.**

- (1) This Act may be cited as the Damages Act 1996.
- (2) Section 3 does not extend to Scotland but, subject to that, this Act extends to the whole of the United Kingdom.
- (3) This Act comes into force at the end of the period of two months beginning with the day on which it is passed.

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## SCHEDULE

Section 6(9).

### GUARANTEES BY NORTHERN IRELAND DEPARTMENTS FOR PUBLIC SECTOR SETTLEMENTS

- 1 This Schedule applies where—
- (a) a claim or action for damages for personal injury is settled [<sup>F13</sup>on terms whereby the damages are to consist wholly or partly of periodical payments]; or
  - (b) a court awarding damages for personal injury makes an order incorporating such terms.

#### Textual Amendments

**F13** Words in Sch. para. 1(a) substituted (1.4.2005) by [Courts Act 2003 \(c. 39\)](#), [ss. 101\(3\), 110\(1\)](#); [S.I. 2005/910](#), [art. 3\(w\)](#); [S.I. 2005/910](#), [art. 3\(w\)](#)

- 2 If it appears to a Northern Ireland department that the payments are to be made by a body in relation to which that department has, by virtue of this Schedule, power to do so, that department may guarantee the payments to be made under the agreement or order.
- 3 The bodies in relation to which a Northern Ireland department may give such a guarantee shall, subject to paragraph 4 below, be such bodies as are designated in relation to that department by guidelines agreed upon between that department and the Department of Finance and Personnel in Northern Ireland.
- 4 A guarantee purporting to be given by a Northern Ireland department under this Schedule shall not be invalidated by any failure on the part of that department to act in accordance with such guidelines as are mentioned in paragraph 3 above.
- 5 A guarantee under this Schedule shall be given on such terms as the Northern Ireland department concerned may determine but those terms shall in every case require the body in question to reimburse that department, with interest, for any sums paid by that department in fulfilment of the guarantee.
- 6 A Northern Ireland department which has given one or more guarantees under this Schedule shall, as soon as possible after the end of each financial year, lay before the Northern Ireland Assembly a statement showing what liabilities are outstanding in respect of the guarantees in that year, what sums have been paid in that year in fulfilment of the guarantees and what sums (including interest) have been recovered in that year in respect of the guarantees or are still owing.

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