



Department of  
**Justice**  
[www.justice-ni.gov.uk](http://www.justice-ni.gov.uk)

## Consultation Questionnaire

**The personal injury discount rate:  
How should it be set?  
A consultation**

### Responding to the Consultation

**Please use this questionnaire to tell us your views on the options.**

The closing date for receipt of responses is **5pm on Friday 14 August 2020**.

Please note that it is unlikely that responses to the consultation will be accepted after this date.

Please indicate clearly if you are responding as an individual or on behalf of an organisation.

Please send your response by email to: [AToJ.Consultation@justice-ni.x.gsi.gov.uk](mailto:AToJ.Consultation@justice-ni.x.gsi.gov.uk)

## **Privacy Notice**

We intend to publish a summary of responses on our website on completion of the consultation process. Any contact details, which will 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 that Act, be disclosed to other parties on request.

## Consultee Details

**Please indicate if you are responding as:** *(please tick only one option)*

A member of the public

On behalf of an organisation

Other.....*(please specify)*

**Please enter your details below:**

<b>Full Name:</b>	Patrick Yu
<b>Title:</b>	<input checked="" type="checkbox"/> <b>Mr</b> <input type="checkbox"/> <b>Ms</b> <input type="checkbox"/> <b>Mrs</b> <input type="checkbox"/> <b>Miss</b> <input type="checkbox"/> <b>Dr</b> <i>(please tick as appropriate)</i>
<b>Organisation:</b> <i>(if applicable)</i>	Northern Ireland Council for Racial Equality
<b>Job Title:</b> <i>(if applicable)</i>	Secretary of the Board
<b>Address, including Postcode:</b>	7 Rugby Road, Belfast BT7 1PS
<b>Email Address:</b>	patrick@nicre.org

**Question 1:**

**Do you agree that investment decisions by claimants in Northern Ireland are likely to be similar to those made by claimants in other jurisdictions?**

**If not, please explain.**

NICRE agree that investment decisions by claimants in Northern Ireland are likely to be similar to those made by claimants in England, Wales and Scotland.

**Question 2:**

**Do you agree that the legal framework for setting the personal injury discount rate in Northern Ireland should be changed so that it is no longer tied to Wells v Wells?**

**Please explain.**

Northern Ireland should change the current practice that based on the House of Lords decision on Wells v Wells. There are two issues in that decision. Firstly all the subsequent review and analysis found that the current Personal Injury compensation scheme is overcompensated by linking to the only ILGS investment scheme under Wells v Wells. This means that the public needs to pay more to the funding scheme. This costs a lot of public finance which is more difficult in viewing both the severe economic impacts of COVID-19 pandemic and the forthcoming hard Brexit to Northern Ireland by the end of the year.

Secondly, the discount rate is set by the Minister of DoJ in consultation with a panel of experts as required by the law. Nevertheless, it is the Ministerial decision after consulting with experts, it is a political judgment. In viewing our political situation in Northern Ireland, in particular after 'The Cash for Ash' scandal, the roles of the Ministerial decision to make the rates should shift to the government actuary, a model well established in Scotland.

**Question 3:**

**Which of the following frameworks for setting the personal injury discount rate in Northern Ireland should be adopted?**

- a) the framework used in England and Wales**
- b) the framework used in Scotland**
- c) another framework (please describe).**

**Please give reasons for your answer.**

The framework used in Scotland should be adopted in Northern Ireland. The reasons are explained in Question 2 above.

**Question 4:**

**Do you agree that adopting the England and Wales model would mean that setting the rate should be a decision for the Department of Justice; and adopting the Scottish model would mean that it should be a decision for the Government Actuary?**

**Please give reasons for your answer.**

The reasons are explained in Question 2 above.

**Question 5:**

**Should the person or body responsible for setting the rate in Northern Ireland be required to consult any other person or body?**

**If so, who, and why?**

If we follow the Scottish model, the Government Actuary is to set up a panel of expert of an actuary, an economist, a person with experience of managing investments, and a person with experience in consumer matters as relating to investments. We also recommend to consult those groups under Section 75 requirement despite there is no impacts on the enclosed impact assessment which I dispute. We need to draw a distinction between 'no data' and 'no impact'. It is not 'no data' that implies 'no impact'!

Moreover, based on the Scottish model, the court also has power to amend the rate if the party in proceedings shows that it is more appropriate in the case in question. WE should maintain this two tiers system.

**Question 6:**

**Should there be a requirement in Northern Ireland to review the personal injury discount rate on a regular basis?**

**Question 7:**

**If so, how often should the rate be reviewed?**

**Please give reasons for your answer.**

If we adopt the Scottish model, the review period should be five years in line with the current Scottish model..

**Question 8:**

**Do you agree with the outcome of the screening exercises and regulatory impact assessment?**

**If not, please explain why.**

No! See my answer in Question 5: We need to draw a distinction between 'no data' and 'no impact'. It is not 'no data' that implies 'no impact'!