Title: Civil Liability Act 2018: Setting the Personal Injury Discount Rate **IA No:** MoJ040/2019 **RPC Reference No: N/A** **Lead department or agency:** Ministry of Justice (MoJ) **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** July 2019 **Source of intervention:** Domestic **Type of measure: Secondary legislation** **Contact for enquiries:** peter.farr@justice.gov.uk

Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANDCB in 2014 prices)	**One-In, Three-Out**	**Business Impact Target Status**
N/A	N/A	N/A	Not in scope	Not in scope

What is the problem under consideration? Why is government intervention necessary?

Where damages for personal injury take the form of a lump sum, the award is adjusted to reflect the anticipated return that the claimant is expected to make by investing the money in advance of when their needs arise. This adjustment is the personal injury discount rate (PIDR) which is set by the Lord Chancellor. In March 2017, and based on the then existing legal framework, which required the assumption that the claimant invested the award in Index-Linked Gilts, the Lord Chancellor set the PIDR at minus 0.75 per cent. Subsequent analysis by the Government Actuary (GA) suggested that the minus 0.75 per cent PIDR would result in significant over-compensation of claimants at the median level if they invested in a prudent low risk portfolio. Were the Lord Chancellor to set the PIDR on the same legal basis today, it is likely that the rate would be minus 1.5 per cent or even lower. Following the Civil Liability Act 2018, the legal framework by which the Lord Chancellor sets the rate has been changed so that claimants are now assumed to be 'low' rather than 'very low' risk investors meaning that the PIDR will now be set with reference to the real returns on a low risk mixed portfolio after making an allowance for taxation, investment management costs and other relevant economic variables. Following a Call for Evidence and further analysis by the GA, the Lord Chancellor has decided, based on the factors he is required to consider, that the PIDR should be reset at a rate of minus 0.25 per cent. Government intervention is required as the PIDR can only be set using secondary legislation.

What are the policy objectives and the intended effects?

The policy objective for introducing the reforms in the Civil Liability Act 2018 was to set the PIDR at a level which ensures that claimants' expected financial needs are met and avoids a significant risk of significant under-compensation while reducing the overall amount of over-compensation previously received by claimants. The new methodology was intended to be fairer to both defendants (typically insurers and the NHS) and wider society while yielding savings to the public purse and helping to secure more affordable insurance. Now that the new methodology is in place, the Lord Chancellor has a legal duty to set the rate at the level which, on the basis of the statutory assumptions, he considers most appropriate to reflect the full compensation principle. The new PIDR will apply in England and Wales only as damages law is devolved in Northern Ireland and Scotland.

What policy options have been considered, including any alternatives to regulation?

Two options are considered in this Impact Assessment

- Option 0: Do nothing. Continue with the current rate of the PIDR.
- Option 1: Reset the PIDR to single rate of minus 0.25 per cent.

Option 1 is preferred as it complies with the Lord Chancellor's legal duty to review the rate and, if appropriate, set a new rate on the basis of the legal tests.

Will the policy be reviewed? It will be reviewed. **Review date:** No later than 5 years after the PIDR is set.

Does implementation go beyond minimum EU requirements?		N/A		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ______________ ***Date:*** 11/07/2019

Summary: Analysis & Evidence   Policy Option 1

Description: Reset the PIDR to a single rate of minus 0.25 per cent.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	**High:**	**Best Estimate: NQ**

COSTS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised costs by 'main affected groups'

Claimants who settle their case after the new PIDR has come into force and are awarded compensation payments that are subject to the PIDR will be adversely affected by the higher PIDR due to a reduction in the size of lump sum settlements. We estimate a reduction in the total value of compensation payments of between £310m to £400m pa.

Other key non-monetised costs by 'main affected groups'

Society will suffer a cost if claimants need to fall back on the state because the return on their investments fails to match the rate of return specified by the PIDR. They may also need to rely on other assets to meet their needs. As a higher PIDR will lead to lower lump-sum awards this outcome may be more likely than under the current PIDR.

BENEFITS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	NQ		NQ	**NQ**

Description and scale of key monetised benefits by 'main affected groups'

Defendants, including public sector bodies (such as NHS Resolution) and insurers, will benefit from lower costs because of the reduction in the value of lump-sum awards subject to the PIDR. The estimated total value of this reduction in costs equals the total value of the reduction in claimants' compensation payments (i.e. £310m to £400m pa.). Of these, we estimate that almost £80m pa. will be savings for the NHS and between £230m to £320m pa. to insurers. Savings to the NHS are effectively a saving to the tax payer.

Other key non-monetised benefits by 'main affected groups'

There should be benefits to wider society in terms of lower insurance premiums if insurance companies respond by reducing premiums. There is a statutory duty on insurers to report on the amount of savings generated by the reforms of the Civil Liability Act 2018, including the changes made to the PIDR methodology, and the extent to which these have been passed on to consumers. There will be greater equity if there is a reduction in the current levels of over-compensation.

Key assumptions/sensitivities/risks — **Discount** NA

We assume no change in the volume of personal injury cases following a change in the discount rate or any change in the volume of Periodic Payment Orders made. It is also assumed that there is no change in the costs of reaching a settlement. It is assumed that in an open and competitive market insurance companies will pass on most of the savings derived from a higher PIDR rate onto consumers in the form of lower insurance premiums.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m:**
Costs: NQ	**Benefits: NQ**	**Net: NQ**	NA

Evidence Base

A. Background

The Personal Injury Discount Rate

1. Individuals who are unlawfully injured by the actions of others are entitled to compensation for their future financial losses in the form of damages. The object of the award of damages set out by the House of Lords in *Wells v Wells*, by Lord Hope of Craighead (page 390A-B) was as follows:

> *"...to place the injured party as nearly as possible in the same financial position he or she would have been in but for the accident. The aim is to award such a sum of money as will amount to no more, and at the same time no less, than the net loss…"*

2. Under these principles, any damages should be such that a claimant is not better or worse off, but fully compensated for their losses. This is the principle of '100 per cent' or 'full' compensation. The overall aim is that the award as a whole, whether lump sum or periodical payments (see paragraph 9 below) or a combination of both, will neither under-compensate nor over-compensate the claimant.

3. Where damages for future loss take the form of a lump sum, that award is adjusted to take account of the effect of the injured person being able to invest the money before the loss or expense for which it is awarded has actually occurred. The adjustment factor is the personal injury discount rate (PIDR) which should represent an *appropriate* rate of return on investing the award. The PIDR is applied once the court has assessed the claimant's financial losses associated with the injury – principally those relating to reductions in future income and any on-going medical and care expenses (sometimes referred to as the 'heads of loss').

4. Under previous legal framework, the PIDR was set by the Lord Chancellor under section 1 of the Damages Act 1996. Prior to the Civil Liability Act 2018 (CLA), the precise principles to be applied were established in case law, in particular *Wells v Wells [1999] 1 AC 34.*

5. *Wells v Wells* made clear that claimants in serious personal injury cases (e.g., people with serious injuries or facing a life of suffering due to the fault and negligence of others) must be treated as very risk averse investors, reflecting the fact that they may be financially dependent on the lump sum awarded, often for long periods or the durations of their lives. Given this, such claimants were seen to be, and remain, different from other, ordinary, investors. This is because they are required to invest their settlements to restore and secure their previous financial position rather than those whose primary motive to invest is to obtain a higher rate of return.

6. The principles in *Wells v Wells* led to the conclusion that the PIDR should be based on the real returns to an investment portfolio that offers the least risk to personal injury claimant investors in protecting an award of damages against inflation and market risk. A portfolio that contains 100% Index-Linked Gilts (ILGs) was assumed to best meet that criterion at the time that the judgement in *Wells* was handed down. On that basis, the PIDR was set with reference to the three-year

average of the real yields on ILGS in 2001 giving a rate of +2.5%.[1] When the rate was then reset in March 2017 on the same basis this resulted in a PIDR of -0.75%.

7. As the forms of personal injury where the PIDR is most commonly (though not always) applied arise from industrial accidents and road traffic accidents, liable defendants will normally hold insurance. This means the cost of lump sums will ultimately be recouped from insurance premiums payable by all policy holders. Likewise, in many cases of clinical negligence, costs will also fall on the National Health Service (NHS) (and similar services in the devolved administrations), medical defence organisations and, ultimately, the taxpayer.

8. A lower PIDR therefore implies higher costs to insurance policy holders and the taxpayer because lump sum awards are discounted less than under a higher PIDR leading to larger lump sums for claimants.

9. In addition to lump sum settlement, claimants will, in many cases, have the option of seeking a periodical payment order (PPO) instead of a lump sum for certain heads of loss (normally care and care management costs but not for future earnings loss). PPOs are orders of the court made under section 2 of the Damages Act 1996 that specify payments to be made by the defendant to the claimant at fixed intervals over a period of time[2]. A PPO involves the regular payment of the assessed costs of the injury for the remainder of the claimant's life or the expected duration of the injury (as appropriate) and is, therefore, <u>not</u> subject to the PIDR. Therefore, where a PPO is available, claimants have access to an income stream for the associated heads of loss which is not subject to any investment risk.

Problem Under Consideration

10. The March 2017 change in the PIDR led to calls for reform to the legal framework for how the rate is set. In particular, those calling for reform argued that the *Wells v Wells* approach was flawed because, in reality, claimants were not advised to, nor did they actually invest their settlements wholly in ILGS but in low risk mixed portfolios with a higher rate of return. Therefore, setting the PIDR with reference to the real rate of return on ILGS could lead to claimants receiving more compensation ('over-compensation') than required to meet their expected needs although, due to investment risk, some claimants might also receive less than is required to meet their needs ('under-compensation').

11. Based on evidence received in response to a consultation in 2017 concerning how claimants normally invest their awards, the Ministry of Justice (MoJ) commissioned the Government Actuary (GA) to estimate the level of over and under-compensation potentially received by claimants at the current PIDR of -0.75%.

12. This analysis[3] shows that under a PIDR of -0.75% the median level of over-compensation was 35% (assuming the claimant invested in the main portfolio used in the analysis – 'Portfolio A'). When a preliminary tax and expense deduction of 0.5% pa is factored in, the 'median' claimant could be expected to be over-compensated by around 25% for an award expected to last for 30 years. When the preliminary adjustment for taxation and management expenses was increased to 0.75% pa., the expected level of over-compensation was still around 20%. This analysis

[1] It is important to note that the analysis used to estimate the PIDR under the old legal framework expressed the damages for inflation in relation to the Retail Price Index (RPI). However, the updated analysis to determine the PIDR under the new legal framework expresses the damages for inflation in relation to the Consumer Price Index (CPI) to measure inflation.

[2] The most common form of PPO are orders where the payments can simply be index-linked to a variety of indices, including, for example, the Retail Price Index and Annual Survey of Hours and Earnings (ASHE) 6115. The Annual Survey of Hours and Earnings provides data on levels, distribution and make-up of earnings and hours worked for UK employees by sex and full-time or part-time status in all industries and occupations. The Standard Occupational Classification code for care assistants and home carers is 6115.

[3]This analysis can be found at: https://consult.justice.gov.uk/digital-communications/personal-injury-discount-rate/results/gad-analysis.pdf

therefore supported the view that the current PIDR would lead to a significant level of over-compensation with the associated costs to insurance policy holders and the public sector. This, in turn, could be seen as in contravention of the '100 per cent' principle described above.

The Civil Liability Act 2018

13. Based on the evidence from the GA's 2017 report concerning the likely levels of over-compensation at the current -0.75% rate, the Government introduced legislation to reform the way that the PIDR was to be set in future. This became law through amendments to the Damages Act 1996 enacted by the Civil Liability Act 2018.

14. The CLA provides for the Lord Chancellor to set the PIDR with reference to the return that a claimant would reasonably expect to achieve if they invested in a "low risk" diversified portfolio[4]. In doing so, the Lord Chancellor is to have regard to the following when setting the PIDR:

- The actual returns available to investors;
- The actual investments made by investors of relevant damages;
- Such allowances for tax, inflation and investment management costs as thought appropriate; and
- Wider economic factors (the term the CLA uses is that the foregoing "does not limit the factors which may inform the Lord Chancellor when making the rate determination").

15. The CLA requires that the PIDR is reset under the new legal framework no later than August 2019. In advance of this, and to inform the Lord Chancellor's decision, the MoJ issued a Call for Evidence in December 2018 to update the evidence base on matters relating to setting the rate under the new legal framework. These matters included the kind of investments claimants are advised to make and actually do make, the likely expected length of a lump sum award, the appropriate measure of inflation to apply when calculating the real rate of return and the

[4] The legislation states that it should be assumed that the damages are invested using an approach than involves:
i. more risk than a very low level of risk, but
ii. less risk than would ordinarily be accepted by a prudent and properly advised individual who has different financial aims.

appropriate adjustment for taxation and the costs of investment management. A summary of responses to the Call for Evidence is published alongside this Impact Assessment (IA).

16. Based on the responses received, the GA has updated the 2017 analysis concerning the likely rates of over and under-compensation. This analysis has also been published alongside this IA. The main changes to the assumptions used compared to the GA's earlier analysis are:

- The selected investment portfolio is slightly less risky than the main one used in the 2017 analysis;
- The assumed length of a lump award for a representative claimant has been increased from 30 to 43 years;
- The deduction for tax and management expenses has been increased from 0.5% to 0.75% pa;
- The investment yield data was updated to the end of 2018; and
- Inflation is expressed in reference to the Consumer Price Index inflation (CPI), as opposed to the Retail Price Index (RPI) used in the previous analysis.

17. Please note that the GA's report published alongside this IA refers to the PIDR as CPI ±x% as requested in the terms of reference. In practical (and legal) terms, the PIDR is a real rate of return that is used to estimate the lump-sum award subject to the PIDR, that is, the ±x% element in the GA's terminology. In this IA we follow the legal definition of the PIDR.

18. The details of the revised GA analysis are presented in Section D below. Overall when these factors were combined the GA now estimates that, at the current PIDR of -0.75%, the representative claimant has a 78% likelihood of being over-compensated with the median level of over-compensation, after the adjustment for expenses and tax, of 26%.

19. On this basis, and for the reasons described in section D, the Lord Chancellor has decided to reset the PIDR to -0.25% from 5 August 2019. This IA describes the impacts of this decision.

B. Rationale and Policy Objectives

20. The conventional economic approach to government intervention is based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate, e.g. monopolies overcharging debtors, or if there are strong enough failures in existing government interventions, e.g. outdated regulations generating inefficiencies. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. Governments may also intervene for reasons of equity (fairness) and for re-distributional reasons (e.g. reallocating resources from one group in society to another).

21. In this case intervention is primarily justified on equity (fairness) grounds: the current PIDR is estimated to yield a high level of over-compensation for the representative claimant. Notwithstanding the greater level of investment risk assumed for the claimant, by setting the PIDR with reference to a low risk investment portfolio rather than a very low risk one, the level of over compensation is likely to be reduced overall by resetting the rate to -0.25%. Had the legal framework for how the rate is set not changed and, therefore, the PIDR set with reference to the real rate of return on ILGs, the GA estimated that if the PIDR was updated now then it is likely that it would have been set at around -1.5% or even lower.

22. The changes introduced by the CLA required the Lord Chancellor to review the rate and determine whether it should be altered or kept the same. Having reviewed the rate as required,

intervention is needed to ensure that the PIDR is set at a level which reflects the Lord Chancellor's determination of what is the appropriate rate under the new legal framework.

23. Under the Damages Act 1996, as amended by the CLA, and existing case law, the Lord Chancellor cannot take into account the impacts on third parties when determining the PIDR in accordance with the statutory criteria. The policy aim of the CLA, which changed the legal framework by which the PIDR is set, was to strike a better balance between claimants, the NHS, insurance policy holders and wider society in terms of how the costs associated with serious injuries caused by the negligence of others are distributed. In particular, it was is expected that the new legal framework for the setting PIDR would lead to a reduction in the financial pressures on the NHS and a reduction in the costs of insurance, when compared with a rate set against the previous legal framework.

C. Affected Stakeholder Groups, Organisations and Sectors

24. The following individuals/sectors are most likely to be affected by the proposed change:

- Claimants in personal injury cases whose claims are affected by the PIDR and, in some cases, their personal representatives.
- Defendants in personal injury cases, including public sector bodies such as NHS Resolution (who negotiate settlements on behalf of the NHS in personal injury cases), other businesses, insurers and Medical Defence Organisations.
- Financial advisers, wealth managers and professional deputies.
- Her Majesty's Courts and Tribunals Service (HMCTS) and the judiciary.
- Government departments, including the Ministry of Justice (MoJ), and local authorities.
- Wider society, either as individuals and groups with views concerning equity and fairness, as individuals who currently pay insurance premiums and taxation and also as potential claimants in future personal injury cases.

25. Of these, only claimants and defendants are examined in detail in the analysis that follows (Section D and E) as the others will be only affected marginally or indirectly. In the rest of this section we briefly explain the possible impacts on those parties who will be less likely to be affected by each option.

26. Professional financial advisors and wealth managers (including the investment arms of insurance and legal service firms), who advise claimants how to invest lump sums or manage their assets often charge fees related to the amount invested. Any change to the PIDR is likely to have a financial impact on this. Professional deputies appointed to manage the affairs of claimants lacking mental capacity will be similarly affected. We do not consider these any further because the impacts are qualitatively similar to those on the claimant.

27. Professional financial advisors and wealth managers are regulated by the Financial Conduct Authority and are required to consider their clients' best interests when providing their services. We have not, therefore, considered as likely any perverse incentives among these professionals to advise investing inappropriately (for example by advising investment in high yield, high risk assets solely for the sake of raising fee income) under the PIDR recommended under Option 1.

28. The courts are unlikely to be significantly affected by the preferred option over and above being the decision makers to whom the rate is directed. There may be small additional costs related to training and guidance to judges in applying any new rate and from updating the 'Ogden Tables' used by the courts when doing this. We assume no change in claim volumes and no change in

the numbers that reach later court stages. To the extent that the latter does change, the additional volume is expected to be negligible in comparison with the court's existing workload.

29. Legal service providers will not be affected by the preferred option. Firstly, in personal injury cases, the lawyer's fee is not directly related to the damages recovered and the success fee under any conditional fee arrangement or damage based agreement agreed with the claimant is capped at a level determined by reference to damages for pain, suffering and loss of amenity and past loss (to which the PIDR does not apply) rather than damages for future pecuniary loss (where the PIDR does apply). Secondly, as there is unlikely to be any latent demand for legal services among victims of serious personal injury, we assume that the volume of cases handled by lawyers will not change.

D. Description of options considered

30. To meet the Government's policy objectives and comply with the Government's legal duties, the following options are considered in this IA:

- **Option 0/Do nothing**: Keep the PIDR at the current level of -0.75%**;**
- **Option 1: Reset the PIDR to a single rate of -0.25%.**

31. The preferred option is Option 1 as this best meets the Government's policy objectives and legal duties.

Option 0: Do nothing

32. Under Option 0 the PIDR would continue to be set at the current rate of -0.75%.

33. As set out above, the policy aim of the CLA was to strike a better balance between claimants, the NHS, insurance policy holders and wider society in terms of how the costs associated with serious injuries are distributed. Analysis provided by the GA shows that, at a PIDR of -0.75%, the representative claimant (as modelled by the GA) would have an approximately 78% chance of receiving full compensation, and a 87% chance of receiving 90% compensation. This, in turn, means that a representative claimant is approximately four times as likely to be over-

compensated as under-compensated, and approximately seven times more likely to receive 90% compensation as to be under-compensated by more than 10%.

Option 1: Reset the PIDR to a single rate of -0.25%

34. Under Option 1, the PIDR will be reset to -0.25% on the basis that this reasonably reflects, in the Lord Chancellor's opinion, the return which a recipient of damages could be expected to achieve on investing his or her lump sum damages in a low risk mixed portfolio after reasonable adjustments have been made for taxation, the costs of investment management and inflation. These issues are discussed in more detail below

35. Under the CLA, the Lord Chancellor must ensure that the investment is made with the object of meeting the losses and costs expected in full and on time with the award exhausted by the end of the term of the award. However, when setting the PIDR, the Lord Chancellor may also adopt an approach that seeks to balance the aims of reducing the current level of over-compensation with a desire to not lead to significant levels of significant under-compensation. This is the approach adopted although the levels of over and under-compensation adopted for this first review under the new legal framework do not set a precedent for any subsequent review.

36. Analysis provided by the GA shows that, at a PIDR of -0.25%, the representative claimant (as modelled by GA) would have a two-third chance of receiving full compensation, and a 78% chance of receiving 90% compensation. This means that a representative claimant is twice as likely to be over- as under-compensated, and approximately four times more likely to receive 90% compensation as to be under-compensated by more than 10%. This outcome offers a reasonable prospect of claimants achieving full compensation and takes into account the GA's sensitivity review.

37. Under the existing legal framework, the Lord Chancellor might set more than one PIDR. However, the Lord Chancellor, on the advice of the GA, does not consider that it would be appropriate to adopt a dual rate for this review, as at present we lack the quantity and depth of evidence required to conclude that the proposed model would be more appropriate than a single rate. For example, it may be appropriate to assume a different portfolio of investments and a different allowance for tax and expenses for claimants with shorter and longer-term awards.

38. The Lord Chancellor has considered that the potential of the dual rate should be explored in more detail, and he has asked officials to set in train a consultation in due course to examine this in greater depth, and to inform the next review of the PIDR and the work of the expert panel who will be advising the Lord Chancellor.

The GA's Report

39. The GA's detailed report offers an expert and objective assessment of the constituent parts of setting the PIDR. The GA has been required to make assumptions and judgments based on material from the Call for Evidence published in December 2018 and other sources. The GA's report provides a rational basis on which the Lord Chancellor can decide at what rate to set the PIDR and the key elements of the analysis are briefly summarised below.

Baseline assumptions

40. *Claimant characteristics*: Setting the PIDR requires establishing a 'representative' claimant from what is (in reality) a broad spectrum of ages, conditions and dependencies. Based on responses to the Call for Evidence the GA has assumed that a representative claimant invests over a period of 43 years, an increase on the 30-year duration previously used in the 2017 GA analysis.

41. *Investment portfolio*: Depending on their individual circumstances, claimants are likely to choose portfolios with different levels of risk. The GA has assessed the make-up and expected returns of the various portfolios that were submitted in response to the Call for Evidence and has used these to construct three reference portfolios. The three portfolios have different combinations of 'growth assets' (producing higher returns over longer periods but with higher risks) and 'matching assets' (generating lower returns but with more certainty) as shown in Table 1.

Table 1: Low-risk portfolio allocation under the cautious, less cautious and central scenarios.

Allocation	Cautious	Central	Less-cautious
Lower risk / matching Assets	70%	57.5%	45%
Cash	12.5%	10.0%	7.5%
Gilts	35.0%	30.0%	22.5%
Corporate bonds	22.5%	17.5%	15.0%
Higher risk / growth assets	30%	42.5%	55%
Equities	22.5%	32.5%	42.5%
Alternatives	7.5%	10%	12.5%

42. The GA's report concludes that **a 42.5%/57.5% split between growth and matching assets provides a representative allocation of assets for the type of investor outlined in the legislation**. This portfolio is the 'central' portfolio described in Table 1 above.

43. *Expenses and tax*: Claimants will incur costs and expenses from investing their lump sum. The tax circumstances will vary for each individual. The responses to the Call for Evidence suggested that for some claimants' the tax effects were likely to be negligible, but were potentially significant for others. In terms of expenses, claimants pay for financial advice and investment management fees and the associated costs (e.g. transactions). Again, there are many differences across the claimant base – with a contrast between those adopting more 'active' approaches (where investors regularly review their investments in an attempt to beat the market) and more 'passive' approaches (where investors invest with reference to market indices). As requested in the MoJ's terms of reference, the GA prepared a representative model using a passive investment management approach as more active approaches should be associated with higher returns. The GA noted that were he to assume a more active approach, he would expect such an approach to lead to higher expenses but these should be compensated by better returns.

44. Taking all factors into account, the GA believes that a reasonable tax and expenses deduction for the investment strategy modelled in his report ranges from 0.6% and 1.7% pa. (the lower end of this range assumes no tax deduction while the upper end contains a tax adjustment of 0.5%) and **that it is appropriate to assume a 0.75% pa. allowance for tax and expenses.** The GA believes that it is appropriate to set the allowance for tax and investment management expenses towards the lower end of the range collected from the Call for Evidence to ensure consistency with his modelling approach and other parts of the GA's advice. In particular, the GA has modelled passive returns that would be expected to attract lower expenses.

45. *Inflation*: Claimants' costs are expected to rise over time owing to inflationary pressures, and this increase will vary depending on the head of loss. For example, consumer costs (e.g. buying goods and services) may be best measured with reference to the CPI, while care costs and loss of future earnings may be influenced by inflation indices linked to earnings growth (like ASHE 6115) which tends to be higher. The previous PIDR inflation measure was the RPI but the GA believes it is reasonable to assume for damage inflation of CPI+1% pa[5]. In practice, the differences between the RPI and CPI+1% are expected to be small. Therefore, users should continue to apply the real rate of return (i.e., the PIDR of ±x% pa.) to determine the damages to cover needs that are assumed to be subject to an inflation of CPI +1%pa.

46. The Lord Chancellor has had close regard to the expert advice of the GA, and in particular the baseline assumptions he has applied when advising on the constituent parts of the discount rate determination. The Lord Chancellor has accepted the GA's expert advice on the baseline assumptions and that these assumptions should all be considered together in the round.

Setting a Single Rate

47. Overall, the GA advises that a representative claimant, investing in accordance with the requirements outlined in the CLA, should currently expect to achieve net returns (after the above deductions for tax, expenses and damage inflation) of around +**0.25% pa**. **This equates to the median level of return with a 50/50 likelihood that a claimant will experience an actual rate of return that is below or above that level** (the under/over-compensation ratio).

48. Table 2 summarises the steps to derive a PIDR of +0.25%.

Table 2: How the PIDR of +0.25% is estimated

% pa above CPI	**Representative claimant (% pa above CPI)**
Expected gross return before deductions (under a low-risk portfolio allocation as described in Table 1 under the central scenario)	+2.0% pa
Deduction for tax and expenses	0.75% pa
Deduction for damage inflation (above CPI)	1.0% pa
Expected net return	**+0.25% pa** **(50/50 likelihood of over and under-compensation)**

49. However, the Lord Chancellor regards this conclusion as a step towards rather than the final outcome for the reasons set out below. In doing so the Lord Chancellor has drawn on the advice

[5] Damages for inflation are expressed in the GA's report in reference to the CPI as requested in the Terms of Reference.

from the GA on projected claimant outcomes and the sensitivity analysis he has undertaken in relation to the data.

50. As the GA's report highlights, deviating from a PIDR of +0.25% would change the likelihood of claimants being able to meet their needs. Table 3 (below) shows how the level of over/under-compensation changes under various PIDRs. It shows that the lower the PIDR, the lower the level of under-compensation and the higher the level of over-compensation.

Table 3: Likelihood of over- and under-compensation and median level of compensation

	PIDRs		
	-0.75%	***-0.25%***	***+0.25***
Higher levels of under-compensation	13%	22%	34%
Lower levels of under-compensation	9%	12%	15%
Over-compensation	78%	66%	51%
Median level of compensation*	26%	12%	1%

*A positive value indicates over-compensation

51. While a PIDR of +0.25% would almost remove the level of over-compensation currently received by the median claimant (brining it down to just 1% as shown in Table 3), the Lord Chancellor considers such a rate would run too high a risk of under-compensating claimants: at this level, the representative claimant as modelled by the GA has only an approximately 51% chance of being fully compensated and approximately only a 66% chance of receiving 90% compensation[6]. The Lord Chancellor considers this to give rise to too great a risk that the representative claimant will be under-compensated, or under-compensated by more than 10%. Therefore, the Lord Chancellor has concluded that it is appropriate to apply a degree of prudence.

52. Conversely, at a rate of -0.25%, where the estimates level of over-compensation received by the median claimant is reduced to 12% from the estimated 26% at the current PIDR, the representative claimant as modelled by the GA still has approximately a two-thirds chance of receiving full compensation and a 78% chance of receiving 90% compensation. In other words, the representative claimant is approximately twice as likely to be over-compensated as under-compensated and is approximately four times as likely to receive 90% compensation as they are to be under-compensated by more than 10%.

53. The Lord Chancellor considers that, even when the sensitivity of the GA's assumptions is taken into account, the above still amounts to a reasonable prospect of a claimant receiving full compensation while avoiding a serious risk of serious under-compensation while also reducing the current expected levels of over-compensation. For these reasons (described in his Statement of Reasons), the Lord Chancellor has decided that **the PIDR should be set at -0.25**%.

E. Cost and Benefit Analysis

54. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book

[6] The likelihood of receiving 90% of compensation can be estimated by adding up the likelihood of over-compensation and the likelihood of lower levels of under-compensation

55. Where possible, IAs identify both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the options under consideration. IAs place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. These might be impacts on certain groups of society or data privacy impacts, both positive and negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.

56. The costs and benefits of each option are compared to option 0, the counterfactual or "do nothing" scenario. As the counterfactual is compared to itself, the costs and benefits are necessarily zero, as is its net present value (NPV).

57. All the impacts in this IA have been calculated in 2019/20 prices.

Methodology

58. To calculate the impact on insurers we drew on data provided by the Association of British Insurers (ABI) submitted in response to the 2017 consultation.

- The ABI collected data from its members in January 2017 on large personal injury claims. The data was collected from just over two thirds of the market and grossed up to estimate the total. The time period covered is one recent year, but it is an amalgamation of slightly different periods reported by different firms. For some firms' data was provided for the calendar year 2016; for others their most recent reported year;

- The ABI data only included settlements worth £250,000 and above so the impact on insurers described below should be seen as a lower bound;

- We have assumed that the information provided by ABI on the value of awards was based on a PIDR of +2.5%. We have uplifted the value of claims using RPI inflation. We then used Ogden multipliers to make a high-level estimate of the corresponding value of claims under different PIDRs. This assumes the number of claims remains unchanged;

- We assume an average age of the representative claimant of 38. We estimated this based on information from ABI;

- The ABI data was adjusted to assume that 70% of claimants are male and 30% female based on information gathered through the 2018 Call for Evidence.

59. The impacts of the NHS are based on data supplied by HM Treasury using information from NHS Resolution. This data relates to the current levels of lump sum settlements made by NHS Resolution, adjusted for the proposed change in the PIDR.

Option 1: Reset the PIDR to a single rate of -0.25%

60. Where damages for future loss take the form of a lump sum, the increase in the PIDR will lead to a reduction in the claimant's award. Option 1 therefore will lead to changes in the distribution of resources between claimants, defendants and wider society compared to the do-nothing option (Option 0). It is normal practice in IAs to ignore effects which only represent the redistribution of resources between individuals ('transfer payments') and to include in the impacts section only those which relate to the use of real resources. However, given the nature of the groups affected

and the magnitude of any potential changes, we think it is important to include these effects within the IA to properly assess the impacts of the preferred option.

61. As follows, we firstly present our estimates on the total value of the transfer between the affected groups. We then go on to discuss the costs and benefits for each affected group in more detail.

<u>Estimates on the total value of the transfer</u>

62. We estimate that the increase in the discount rate from -0.75% to -0.25% will bring savings to insurers of between £230m to £300m pa and savings to public bodies (mainly the NHS) of £80m pa. This will also mean an equivalent reduction in the value of compensation payment for claimants of between £310m to £400 pa. It is important to caveat that our estimates, particularly those regarding the savings to insurers (and the corresponding reduction in compensation received by claimants) are based on limited evidence. The above range provided tries to capture the existing uncertainty given the limitations of our data.

Costs of Option 1

Claimants

63. Because Option 1 leads to a higher PIDR than under option 0, this will result in reduced lump sum damage awards to claimants. This will be a cost to claimants and a benefit to defendants, although this needs to be seen in the wider policy context of attempting to reduce the overall level of over-compensation to reduce insurance premiums and the costs to the NHS. Table 5 illustrates this impact under various scenarios regarding awards and claimants' characteristics.

Table 5: Estimated (illustrative) individual awards at current and new PIDR

PIDR	38-year old male with lifetime annual financial costs of £50,000	38-year old female with lifetime annual financial costs of £50,000	38-year old male with lifetime annual financial costs of £30,000	38-year old female with lifetime annual financial costs of £30,000
-0.75%	£2,935,500	£3,184,500	£1,761,300	£1,910,700
-0.25%*	£2,565,250	£2,763,750	£1,539,150	£1,658,250

*The Ogden tables do not provide multipliers for this rate, therefore, we have extrapolated them using the two closest multipliers.

64. A higher PIDR may also lead some claimants to invest in assets with a higher level of investment risk than they otherwise would have chosen, to ensure that their lump sum awards meet their requirements.

65. Fluctuations in capital values might lead the claimant to get a low price for the asset when they are sold to meet the claimant's ongoing costs and deplete the award of damages more quickly than planned. This may prompt the claimant to increase risk in their investments to recoup the losses, which could lead to further losses. There may also be tax implications and transaction costs as a result of being forced to sell investments earlier than expected.

66. Alternatively, if claimants with lower risk tolerances are unwilling to invest in the types of assets used to set the PIDR they may invest in less risky assets with lower average rates of return. If so, they risk not fully achieving the streams of income assumed in their settlements and running out of money before the expected terms of their awards. In the event a claimant runs out of money,

they could become solely reliant on the NHS and state benefits, with associated costs to the taxpayer. Alternatively, the may be forced to rely on their other assets to meet their needs.

67. However, it is important to remember that PPOs are generally available to claimants for certain parts of their settlement (usually care and care management costs but not lost future earnings). A higher PIDR will make PPOs more attractive to claimants who are unwilling to invest in higher risk portfolios and who want to reduce the levels of longevity and investment risk they will face.

68. Claimants who have a risk appetite equal to or greater than that implied by the PIDR set under the new legal framework are assumed to continue to invest in assets which are consistent with their risk appetite. That said, if a higher PIDR were used to calculate the compensation lump sum owed, this will result in a lower award, which may in turn affect their investment choices.

Defendants

69. A higher PIDR will lead to lower lump-sum damage awards. As mentioned above, this will make PPOs relatively more attractive to claimants who are unwilling to invest in higher risk portfolios.

70. As insurers must hold additional capital for PPOs to meet solvency requirements under Solvency II, an increased propensity for PPOs at a higher PIDR would, therefore, represent an immediate cost to insurers, albeit one that is likely to be partially offset by the reduced or absent lump sum in cases settling by a PPO rather than by a lump sum alone. As we are unable to estimate the impact of this option on the uptake of PPOs, this impact has not been monetised.

71. NHS Resolution does not have to meet Solvency II requirements so will not be affected in the same way as insurers.

Wider Society including Taxpayers and Insurance Policy Holders

72. Society will suffer a cost if claimants have to fall back on the State because of their investments failing to match the rate of return predicted by the PIDR and not having other assets to use. As a higher PIDR will lead to lower lump-sum awards, this outcome may be more likely than under the current PIDR (Option 0).

Benefits of Option 1

Claimants

73. A higher PIDR will make PPOs more attractive to claimants who are unwilling to invest in higher risk portfolios and who want to reduce the levels of mortality and investment risk they will face. PPO may be better suited for certain claimants.

74. Because we are unable to estimate the likely change in the uptake of PPOs as a result of this option, this impact has not been monetised.

Defendants

75. A higher PIDR will result in reduced lump sum compensation awards by defendants relative to the base case. Defendants will include insurers, government bodies such as the NHS and uninsured businesses and individuals. In the case of insurers, it is expected that these benefits

will be mostly passed on to consumers in the form of lower insurance premiums relative to the base case.

76. NHS Resolution may benefit in the short term from an increased uptake of PPOs as it will mean lower immediate payments in the cases settling with a PPO rather than a lump sum alone, although total future liabilities would increase if this were to occur.

Wider Society including Taxpayers and Insurance Policy Holders

77. Society will benefit from greater equity (fairness) as the new PIDR will reduce the current levels of over-compensation of personal injury claimants.

78. Individuals and businesses in wider society will also benefit from lower insurance premiums if insurers pass on their lower costs. Taxpayers will benefit from lower government spending on compensation payments in clinical negligence cases.

F. Assumptions, Risks & Sensitivity Analysis

79. In this section, we outline the main assumptions that have been made in preparing the analysis presented above and any risks associated with these. We begin with the main baseline assumptions used in the GA's analysis and then describe the others used to write this IA.

The GA's Assumptions and Sensitivity Analysis

80. <u>Net returns</u>: The GA's analysis on the claimants' likelihood of being under/over-compensated under various PIDR (Table 3) are based on the GA's baseline assumptions (see paragraphs 39 to 44). These assumptions underpin the GA's estimated net return for the representative claimant. Any deviation from these assumptions will change this estimated net return and, therefore, the corresponding likelihood of being under/over-compensated (other things being equal). Table 6 provides a high-level summary of potential deviations from the main baseline

assumptions used in the GA's analysis, their impact on the claimants' returns, and their likelihood of being under-compensated and vice-versa.

Table 6: Summary of impacts of deviating from baseline assumptions on returns

Factor	Baseline assumption	Deviation from baseline assumptions sorted by impact on returns	
		Decreases returns (higher likelihood of under-compensation)	Increases returns (lower likelihood of under-compensation)
Investment period	Investment period of 43 years	Shorter investment period	Longer investment period
Investment approach	42.5% portfolio allocation to growth assets	Lower allocation to growth assets	Higher allocations to growth assets
Tax and expenses	-0.75% pa	Higher tax, expenses or both	Lower tax, expenses or both
Damage inflation	CPI + 1% pa	Higher inflation	Lower inflation
Economic assumptions	Projections based on two third-party providers	Worse economic conditions leading to lower returns	Better economic conditions leading to higher returns

81. In the paragraphs which follow, we provide a more detailed description of the sensitivity of the estimated net real rate of return used to determine the PIDR to particular changes in the underlying assumptions in line with the sensitivity analysis presented in the GA's report.

Investment Period

82. The GA's central analysis assumes the claimant needs to meet damages over the next 43 years. In practice, claimants might need to meet damages over shorter or longer periods depending on their life expectancy and needs. To assess the impact of this, the GA analysis looks at the returns to the central portfolio associated with investment periods of 10 and 50 years.

83. Claimants investing over a 10-year period had expected returns around 0.75% to 1% pa. lower than the expected returns for the 43-year representative claimant. A claimant investing over 50 years were expected to achieve returns that are up to 0.25% pa. higher than the expected

returns for a 43-year claimant. These impacts are not symmetrical because the representative claimant is usually investing over a time period that is much closer to the 50-year period.

84. Therefore, making different assumptions about the investment period might reduce the PIDR by 1% pa. or increase it by 0.25% pa.

Investment approach

85. The central GA analysis assumes that claimants invest in the central portfolio with a 42.5% allocation to growth assets. The GA report considers the impacts of varying this assumption under a single PIDR. The impact of investing in the alternative portfolios described in Table 1 above can be summarised as follows:

- Cautious portfolio: a 30% allocation to growth assets results in expected returns that are around 0.45 to 0.5% pa. lower than the expected returns for a representative claimant investing in the central portfolio

- Less-cautious portfolio: a 55% allocation to growth results in expected returns that are around 0.4% to 0.5% pa. higher than the expected returns for a representative claimant investing in the central portfolio

86. Therefore, making different assumptions on how the claimant invests might plausibly increase or decrease the expected returns, and hence the PIDR chosen, by 0.5% pa.

Tax and expenses

87. The baseline GA analysis assumes claimants need to meet expenses and tax liabilities of 0.75% pa. This central assumption for tax and expenses has been made to be consistent with the modelled returns (i.e., a ‘passive’ investment strategy needs to be adopted for both). Hence, the GA recommends that were any significantly different views on expenses taken, the simulated returns should also be reviewed to ensure consistency.

88. However, there may be plausible arguments that it is reasonable to make small adjustments for the allowance for tax and expenses. Some claimants might face higher tax charges (for example because they have alternative sources of income). Alternatively, some claimants may face higher expense loadings because they are investing a smaller lump sum for which proportionately higher fees often apply.

89. In general, lower or higher assumed levels of expenses can be added or deducted directly from the PIDR. For example, an allowance of 1% pa., representing an additional 0.25% pa. in comparison to the assumption of 0.75%, would reduce expected returns by a further 0.25% pa.

Damage inflation

90. The GAD baseline analysis assumes that claimants’ damages inflate at a rate of CPI+1% pa., based on their needs being a mix of general consumption and elements linked to earnings growth (such as care costs). If it were assumed that claimants’ damages inflation is better represented by CPI then the claimant effective net returns, and hence the appropriate PIDR, would be around 1% pa. higher. Conversely, if it were assumed that claimants’ damages inflation

is better represented by earnings then the claimant effective net returns, and hence the appropriate PIDR, would be around 1% pa lower.

Economic assumptions

91. The GAD analysis is dependent on the choice of economic simulation model and the underlying parameters. To mitigate the risk of model error, the GA generated scenarios using two proprietary third-party models (Economic Scenario Generators). The results from both simulations are broadly consistent with the GA's normal approach to future investment returns.

92. However, the GA noted that it is possible to take alternative views on the expected returns for different asset classes. In particular choosing one or other of the third-party scenario models (rather than using both) would increase or decrease the simulated investment return, and hence the choice of PIDR, by up to 0.5% pa.

93. The GA analysis uses scenarios calibrated to economic conditions as at 31 December 2018 and believes this is appropriate for the purpose of setting the PIDR as market movements since this date are not expected to have a material impact on the analysis.

94. The PIDR adopted is likely to be in force for the next five years until the next review. Under the assumptions used in the GAD modelling, a claimant settling towards the end of this period would be expected to be investing in more favourable economic conditions than a claimant investing in the next year. As such, it might be argued that a slightly higher PIDR would better reflect the possible investment conditions over the whole period until the next review.

95. To estimate the potential effect of this, the GA repeated his analysis, but with projections starting in five years' time. Broadly speaking, the simulated returns calibrated to potential economic conditions in five years' time were around 0.5% to 1% pa. higher than return simulations calibrated to December 2018.

96. Assuming that claimants settle evenly throughout the next five years it might be possible to argue that the PIDR should be set around 0.5% pa. higher than outlined in the GA report. However, this is dependent on the assumption that investment and economic conditions revert back to normal which is not guaranteed; and the short-term outlook remains highly uncertain given events such as the UK's exit from the European Union and persistent low productivity.

97. Furthermore, the CLA includes a provision for the PIDR rate to be reviewed before the end of the five-year review period and the GA believes that this is a better mechanism for the Government to update the PIDR should economic circumstances change materially.

Certainty of damages/longevity risk

98. In addition to the sensitivity of the estimated net return to changes in the baseline assumptions, the GA also discussed the impact of the certainty of damages/longevity risk on setting the PIDR while not quantifying any impacts.

99. The GA analysed returns over a fixed period of damages. In practice a majority of claimants are likely to have to meet some damages that are not defined over a fixed period – for example a claimant may need to meet damages in relation to care costs for the rest of their life or a claimant's needs might change. As such, the assumption that the period of damages is fixed and certain is a simplifying assumption that is likely to have a material impact on whether a claimant is sufficiently or under-compensated. Therefore, it is possible that the claimant lives much longer

than this period and exhausts the capacity of the investments to meet their damage needs over their whole life.

100. Broadly speaking, the impacts of this risk are likely to be greater for claimants with shorter life expectancies. Their award is only intended to cover a relatively short period of time over which:

- Expected returns are currently lower;
- There is limited time over which to recover from any poor investment returns, and;
- There is also limited time over which to build up excess funds from good investment returns

101. The longevity risk can have a material impact on claimant outcomes is a relevant factor to consider when setting the PIDR. In particular:

- The longevity risk is likely to mean that the actual range of outcomes and risks faced by claimants are inevitably different to those in the baseline results. This reinforces the fact that the GA analysis is intended provide a guide in setting the rate not a formula for it, and the GA warns of the risk of over-fitting to the results of the analysis when setting the rate;
- However, it can be observed that in making a cash settlement, rather than a periodic payment order, the claimant might be considered to be implicitly accepting this risk;
- The GA suggests that longevity risk may also provide further support for a dual PI discount rate as, all other things equal, it provides larger settlements to claimants with shorter awards for whom the longevity risk is greatest.

Other Assumptions

102. In addition to the baseline assumptions made by the GA, the following assumptions were made in order to calculate the impact of the preferred option.

- **Volume of awards subject to PIDR**: We assume the volume of personal injury claims subject to the PIDR will not change under the preferred option. Claims for which future pecuniary loss is relevant are made regardless of the value of the lump sum expected.

- **Volume of claims heard by the courts**: We assume the volume of claims reaching the latter court stages is constant. The courts are not affected materially by the preferred option.

- **Degree of competition in the insurance market**: The benefits to wider society under Option 1 in terms of lower insurance premiums is based on the assumption that insurance companies will pass their savings from paying out lower lump sums onto consumers.

- **Claimants' risk appetite**: There is a risk that some claimants may be unwilling to assume more risk, even if a prudent investor in their situation would do so. Where this happens, the return would not match the PIDR and the individual would run out of money before the expected term of the award. This could lead to more individuals relying solely on the NHS and on other government transfers at, or before, the end of their awards with associated costs to the tax payer.

- **PPO take-up**: An increase in the PIDR may make PPOs more attractive to claimants, which could mean some defendants face higher costs. This will be offset, however, by the reduced lump sums they will pay in other cases.

- **Expectations of review**: There is risk that claimants or defendants may be affected abruptly by changes to the PIDR or that they may seek to delay settlement if they anticipate a pending review will produce a PIDR more advantageous to themselves. We regard these risks to be modest under the five-year interval specified under the CLA. The risks are further mitigated by the discretion of the Lord Chancellor to review the rate at an interval of less than five years, if deemed appropriate.

G. Direct costs and benefits to business calculations (following the Better Regulation Framework and Business Impact Target (BIT) methodology)

103. The change in the PIDR does not qualify as regulatory provision and do not meet this definition under s22 of the Small Business, Enterprise and Employment Act (2015). Accordingly, the preferred option will have no direct impact on business for the purposes of the BIT.

104. With regards to s22(3)(a), which defines a regulatory provision in relation to a business activity as one which 'imposes or amends requirements, restrictions or conditions, or sets or amends standards or gives or amends guidance in relation to the activity'; the guidance the Lord Chancellor is amending solely relates to the court's role in awarding damages and is not guidance on how to carry out a business activity. While the application of the guidance by courts may have knock-on consequences for business (e.g. lower lump sum settlements for insurers or lower insurance premiums for businesses) this does not mean the Government is giving guidance on business activities.

105. With regards to s22(3)(b), which also defines a regulatory provision as one 'relating to the securing of compliance with, or the enforcement of, requirements, restrictions', etc., while the damages that a court awards in a personal injury case might have an indirect effect on business compliance, the court's role in awarding damages is about compensating the victim rather than ensuring any future regulatory compliance.

H. Wider impacts

Equalities

106. We have identified that the policy options outlined above may have equality impacts and have set these out in the equalities impact assessment.

Small and micro business assessment (SaMBA).

107. We have carried out a competition assessment and do not anticipate that the choice of the new PIDR will have any competition impact. Any effect will be indirect. The new PIDR will apply to all businesses irrespective of their size as any business found liable for a personal injury must pay damages to the claimant.

108. We do not consider that the choice of parameters will affect the operations or performance of small firms or affect them differently from other businesses. This is because the PIDR is applied

by the court to its quantification of an established legal liability in personal injury cases, irrespective of the identity of the defendant.

I. Monitoring & Evaluation

109. Under the CLA, the PIDR has to be reviewed by a date no later than five years after the rate has been changed. The CLA provides that an Expert Panel, chaired by the GA, will be appointed to advise the Lord Chancellor on the issues involved.

110. The CLA also provides that the Lord Chancellor may choose to review the PIDR at a date before the expiry of the five-year period noted above. If the Lord Chancellor were to choose to do this, the Expert Panel referred to above would also be convened to advise on the issues involved. If the Lord Chancellor were to exercise this option, the next five year review period would commence after any new rate is set.