Draft Order laid before Parliament under section 2B(6)(c) of the Damages Act 1996 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2004 No. [ ]

DAMAGES (ENGLAND AND WALES)
DAMAGES (NORTHERN IRELAND)

The Damages (Variation of Periodical Payments) Order 2004

Made - - - -	*2004*
Coming into force - -	*2004*

Whereas the Lord Chancellor, in accordance with section 2B(6)(b) of the Damages Act 1996(**1**), has consulted with such persons as appeared to him to be appropriate:

And whereas a draft of this Order has been laid before Parliament in accordance with section 2B(6)(c) of that Act:

Now, therefore, the Lord Chancellor, in exercise of the powers conferred upon him by section 2B(1), (2), (3) and (6) of the Act, hereby makes the following Order:

Citation, commencement, interpretation and extent

1.—(1) This Order may be cited as the Damages (Variation of Periodical Payments) Order 2004 and shall come into force on the fourteenth day after the day on which it is made.

(2) In this Order —

(a) "the Act" means the Damages Act 1996;

(b) "agreement" means an agreement by parties to a claim or action for damages which settles the claim or action and which provides for periodical payments;

(c) "damages" means damages for future pecuniary loss in respect of personal injury;

(d) "defence society" means the Medical Defence Union or the Medical Protection Society;

(e) "variable agreement" means an agreement which contains a provision referred to in Article 9(1);

(f) "variable order" means an order for periodical payments which contains a provision referred to in Article 2.

(3) In the application of this Order to Northern Ireland –

(**1**) 1996 c. 48; section 2B was inserted by the Courts Act 2003 (c. 39), section 100.

(a) "claimant" means plaintiff;

(b) "permission" means leave;

(c) "statements of case" means, in the High Court, the writ and pleadings and, in the county court, the civil bill and any notice of intention to defend, defence, notice for particulars, replies and counterclaim.

(4) This Order extends to England and Wales and Northern Ireland.

(5) This Order applies to proceedings begun on or after the date on which it comes into force.

Power to make variable orders

2. If there is proved or admitted to be a chance that at some definite or indefinite time in the future the claimant will —

(a) as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration, or

(b) enjoy some significant improvement, in his physical or mental condition, where that condition had been adversely affected as a result of that act or omission,

the court may, on the application of a party, with the agreement of all the parties, or of its own initiative, provide in an order for periodical payments that it may be varied.

Defendant's financial resources

3. Unless —

(a) the defendant is insured in respect of the claim,

(b) the source of payment under the order for periodical payments is a government or health service body within the meaning of section 2A(2) of the Act,

(c) the payment is guaranteed under section 6 of or the Schedule to the Act, or

(d) the order is made by consent and the claimant is neither a child, nor a patient within the meaning of Part VII of the Mental Health Act 1983(**2**) or of Part VIII of the Mental Health (Northern Ireland) Order 1986(**3**),

the court will take into account the defendant's likely future financial resources in considering whether to make a variable order.

Award of provisional damages

4. The court may make a variable order in addition to an order for an award of provisional damages made by virtue of section 32A of the Supreme Court Act 1981(**4**) or section 51 of the County Courts Act 1984(**5**)or, in relation to Northern Ireland, paragraph 10(2)(a) of Schedule 6 to the Administration of Justice Act 1982(**6**).

Contents of variable order

5. Where the court makes a variable order —

(a) the damages must be assessed or agreed on the assumption that the disease, deterioration or improvement will not occur;

(**2**) 1983 c. 20.
(**3**) S.I.1986/595 (N.I. 4).
(**4**) 1981 c. 54; section 32A was inserted by the Administration of Justice Act 1982 (c. 53), section 6.
(**5**) 1984 c. 28.
(**6**) 1982 c. 53.

(b) the order must specify the disease or type of deterioration or improvement;

(c) the order may specify a period within which an application for it to be varied may be made;

(d) the order may specify more than one disease or type of deterioration or improvement and may, in respect of each, specify a different period within which an application for it to be varied may be made;

(e) the order must provide that a party must obtain the court's permission to apply for it to be varied, unless the court otherwise orders.

Applications to extend period for applying for permission to vary

6. Where a period is specified under Article 5(c) or (d) —

(a) a party may make more than one application to extend the period, and such an application is not to be treated as an application to vary a variable order for the purposes of Article 7;

(b) a party may not make an application for the variable order to be varied after the end of the period specified or such period as extended by the court.

Limit on number of applications to vary

7. A party may make only one application to vary a variable order in respect of each specified disease or type of deterioration or improvement.

Case file

8.—(1) Where the court makes a variable order, the case file documents must be preserved by the court until the end of the period or periods specified under Article 5(c) or (d) or of any extension of them or, if no such period was specified, until the death of the claimant.

(2) The case file documents are, unless the court otherwise orders —

(a) the judgment as entered;

(b) the statements of case;

(c) the schedule of expenses and losses;

(d) a transcript of the judge's oral judgment;

(e) all medical reports relied on;

(f) a transcript of any parts of the claimant's own evidence which the judge considers necessary;

(g) any subsequent orders.

(3) A court officer must ensure that the case file documents are provided by the parties where necessary and filed on the court file.

(4) Where a variable order has been made, the legal representatives of the parties and, if the parties are insured, their insurers, must also preserve their own case file until the end of the period or periods specified under Article 5(c) or (d) or of any extension of them or, if no such period was specified, until the death of the claimant.

Variable agreements

9.—(1) If there is agreed to be a chance that at some definite or indefinite time in the future the claimant will —

(a) as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration, or