



Department of
Justice

An Roinn Dlí agus Cirt
Máinnystrie O tha Laa

Working together for fairness, justice and safety

Consultation: Personal Injury Discount Rate -
taking account of inflation.

Summary of consultation responses and next
steps.

June 2026

Contents

	Page
1. Introduction	3
2. Summary of responses to the questions	4
3. Next steps	15
Appendix: List of consultation respondents	18

1. Introduction

- 1.1 This paper provides a summary of responses received by the Department of Justice to a consultation on providing more flexibility in how inflation is taken into account by the Government Actuary when setting the personal injury discount rate.
- 1.2 The consultation opened on 18 November 2025. A consultation paper, equality screening and rural needs impact assessment were published on the Department's website. The consultation was also published on the Citizen Space portal, which is hosted on the nidirect website. The consultation closed on 28 January 2026, although one extension was granted upon request from a stakeholder. Eighteen responses were received, two of which were from individuals and one of which was submitted anonymously through the Citizen Space portal. The organisations that responded to the consultation are listed in the Appendix.
- 1.3 The Department is grateful to all respondents for their interest in this consultation.
- 1.4 The responses were collated, carefully considered and this paper summarises them. Comments from respondents that were not relevant to the consultation questions were noted but have not been included in the summary.

2. Summary of responses to the questions

Consultation Question 1

In principle, should the Damages Act provide more flexibility in relation to how the impact of inflation is to be taken into account by the Government Actuary when setting the personal injury discount rate for Northern Ireland?

- Yes
- No

Please give reasons for your answer.

- 2.1 All eighteen respondents answered this question, all of them answering “yes”: the Damages Act should provide more flexibility in relation to how the impact of inflation is to be taken into account by the Government Actuary when setting the personal injury discount rate.
- 2.2 This included eleven respondents representing the interests of defendants, three representing the interests of claimants, and four others.

Comments supporting more flexibility

- 2.3 There was a degree of commonality among the respondents in the reasons given for supporting greater flexibility, which mostly related to the 100% compensation principle.
- 2.4 A firm of solicitors providing services to the insurance industry, said that a framework that permits an evidence-based adjustment can better target the statutory objective of full compensation (no more and no less), while two other respondents representing the defendant interest said that greater flexibility would align with the 100% compensation principle.
- 2.5 A number of other respondents representing the defendant interest said that RPI was no longer suitable as it overstates inflation and the prescription of an unadjusted AWE in 2024 was likely to have overstated inflation and undermined the 100% compensation principle; while another said that it risked

over-compensation; and two others said that an unadjusted index may result in injured claimants receiving more than 100% compensation.

- 2.6 Two respondents representing the claimant interest said that greater flexibility, including the ability to adjust an index, would provide a closer match to the losses from inflation incurred by injured people; while one on the defendant side made the same point, and another said that greater flexibility would allow the rate-setter to better reflect prevailing economic circumstances and market conditions. An independent respondent said that a single measure of inflation will fail to reflect damages inflation.
- 2.7 A respondent on the claimant side said that the Government Actuary should be given discretion befitting her expertise and not be confined by overly prescriptive statutory rules that may age badly.
- 2.8 A number of respondents from both sides (four on the defendant side; and two on the claimant side) noted that allowing greater flexibility for the rate-setter would be consistent with practice in England and Wales.

Comments opposing more flexibility

- 2.9 There were no comments opposing more flexibility.

Consultation Question 2

If more flexibility is to be provided, how should this be achieved?

- (a) Prescribe an index, such as the consumer prices index, in the primary legislation, with the ability for the rate-setter to make an adjustment to that index.
- (b) Prescribe an index, such as the consumer prices index, and an adjustment in the primary legislation, with the ability for the Department to amend the adjustment.
- (c) Another way (please explain).

Please give reasons for your answer.

2.10 Fifteen respondents preferred option (a). These included nine respondents representing the defendant interest, three respondents representing the claimant interest, two independent respondents (one whose preference was conditional on there being “a fair, transparent and clear projection for real earnings growth and for a representative compositional mix between prices and earnings-related heads of damages”) and one anonymous respondent. One respondent – from the defendant side – preferred option (b). Two respondents – one from the defendant side and one independent preferred option (c).

Comments supporting option (a)

2.11 The most common reason for preferring option (a) – cited by eleven respondents – related to timeliness and the view that the rate-setter could adjust the index more quickly than the primary legislation could be amended, and therefore the rate-setter could be more responsive to changes to factors affecting inflation.

2.12 On the claimants’ side, one respondent said that embedding the adjustment in the legislation could impede timely responses when setting the rate, which would: “unnecessarily slow the ability of decision-makers to respond to real-world inflationary or legal trends and could lead to periods in which pursuers are not fully compensated because the statutory adjustment no longer reflects the inflationary pressures affecting their losses”. Another said that the ability to react in a timely fashion could be hampered due to the inherently lengthy period usually required to amend primary legislation. A third from the claimant side said that requiring changes through legislation might slow down the rate-setter’s ability to respond quickly, while allowing the rate-setter to adjust the index could help ensure that the rate stays suitable and adaptable, even when economic conditions are turbulent.

2.13 On the defendants’ side, four respondents noted that the “shape” of damages changes over time and therefore prescribing the adjustment in primary legislation would not be optimal. Another said that there could only be reasonable confidence in the adjustment at the time of enactment and changes

in economic conditions may mean that the adjustment soon becomes out of step. A sixth respondent said that: “setting an initial level of adjustment [in legislation] when the differential between the index and damages inflation is subject to constant change is a pointless exercise;” and that it would: “require the rate-setter to suggest an appropriate adjustment, the Department to amend the rate, then the rate-setter to consider the appropriate discount rate when the damages inflation differential may already have changed”. Two others referred to a risk of legislative lag, and the former to “an unnecessary department resource drain”.

2.14 Two reasons for preferring option (a) were cited by four respondents. One of these was that it would provide alignment with England and Wales (where the expert panel that advises the Lord Chancellor has discretion to use whatever adjusted measure it considers appropriate). Two respondents representing the claimant interest and two representing the defendant interest mentioned this reason. One of the organisations on the claimant side said that divergence between jurisdictions can create unfairness between citizens in those jurisdictions.

2.15 The other reason cited by four respondents was that the adjustment should be an actuarial rather than a political decision. Three respondents representing the defendant interest and one representing the claimant interest mentioned this reason. The latter said that there would be a risk that option (b) would be “vulnerable to politicisation and influence by powerful pressure groups”; while one of the three respondents on the defendant side said that it could have “the appearance (or reality) of political influence”.

2.16 The following reasons were each offered by one respondent (all on the defendant side).

- option (a) is the most straightforward mechanism
- it provides the best balance between stability, transparency and technical accuracy
- it balances certainty and responsiveness

2.17 Finally, seven respondents who preferred option (a) – six representing the defendant side plus one independent – said that it should include a requirement for the rate-setter to consult stakeholders. Five of those (all on the defendant side) said that the rate-setter should also have to publish a statement of reasons for its decision.

Comments supporting option (b)

2.18 A respondent from the defendant side) was the only respondent to prefer option (b). It argued that it most closely reflects the policy aim that “the key parameters of the PIDR should be pre-set within the legislation itself rather than allowing the rate-setter any discretion”.

2.19 An individual respondent, however, whose first preference was for option (c), also gave reasons for preferring option (b) over option (a). He considered that the adjustment should not be left to the rate-setter because responsibility belongs with politicians.

Comments supporting option (c)

2.20 A respondent representing the defendant interest said that the Government Actuary could be left to decide both the index (or indices) and the adjustment(s) for projecting future price and earnings inflation.

2.21 An individual respondent said that the ideal was to prescribe two indices – a wages index and a prices index – with separate rates set for damages affected by wages and prices respectively.

2.22 A respondent on the claimant side, whose first preference was for option (a), also suggested an alternative approach of providing in primary legislation that: “inflation must be assessed so as to best reflect the real-world erosion of damages over time with the rate-setter being required to consider CPI, CPIH, wage inflation, and long-term inflation expectations, while prohibiting reliance on factors unrelated to full compensation”. They also suggested that this could

be accompanied by transparency and accountability measures such as mandatory publication of reasoning.

Other comments

2.23 An independent respondent said that providing a fair, transparent and clear process able to be replicated by external parties was of greater importance than choosing between options (a), (b) and (c).

Consultation Question 3

Which is the best inflation index to prescribe in the legislation?

- CPI
- CPIH
- Another index

Please give reasons for your answer.

2.24 Fourteen respondents preferred CPI. These included ten respondents representing the defendant interest, two representing the claimant interest, one independent respondent and one anonymous respondent. Two respondents – one from the claimant side and one independent – preferred CPIH. One independent respondent expressed no preference and one from the defendant side preferred that no index should be prescribed.

Comments preferring CPI

2.25 Among the most common reasons given for preferring CPI were the following reasons that all relate to its common usage and familiarity:

- it was the index used by the expert panel for the most recent review of the discount rate in England and Wales
- it is generally the measure of inflation used by the Government
- it is used for the Bank of England's inflation target
- it is more widely used throughout the economy

2.26 These reasons were each given by six respondents all representing the defendant interest: four of these respondents cited all four; one cited all but the

second reason; one respondent each cited the first, second, third and fourth reasons.

2.27 Also mentioned by six respondents was a preference for consistency between jurisdictions in the UK, noting that CPI has been used when setting the discount rate for England and Wales. Five respondents from the defendant side and one from the claimant side cited this reason.

2.28 Three respondents, all on the defendant side, referenced CPI's longer history than CPIH as a reason for favouring its prescription as the base inflation measure.

2.29 One on the claimant side said that an adjusted CPI would be the "closest match inflationary measure for the discount rate"; a respondent on the defendant side said that CPI "reflects the reality of the costs that claimants face"; and another on the defendant side said that CPI is a cleaner proxy for inflation in personal injury claims.

2.30 Two respondents from the claimant side said that housing costs should be excluded from the future loss total before considering the inflationary weighting of the heads of loss that remain because the cost of buying alternative accommodation is not dependent on the discount rate, as the reversionary interest is calculated using the life expectancy, not a discount rate-derived multiplier.

2.31 Other reasons given (all by respondents representing the defendant interest) were as follows:

- CPI is likely to be seen as the most uncontroversial and reliable measure of inflation
- CPI is a more robust measure of inflation

- current economic modelling used to determine the discount rate is already expressed relative to CPI and investment returns are forecast with CPI as the core reference point
- CPI was used as the basis for uprating the tariff used in the settlement of claims within the Official Injury Claims process in England and Wales
- the Office for National Statistics is undertaking work on a specific Northern Ireland index of CPI
- CPIH includes housing costs based on an estimate of what a homeowner would pay to rent their home, which is a hypothetical rather than real cost; and also depends on rental data that are inaccurate
- CPIH is not based on long-term investment return modelling

Comments preferring CPIH

2.32 Two respondents (one on the claimant side and one independent) preferred CPIH because it is designated by the Office of National Statistics as its preferred prices inflation index.

2.33 A claimant-side respondent also said that CPIH is more accurate because it is more comprehensive than CPI, since owner-occupier housing costs form a significant part of long-term expenditure and are particularly relevant to seriously injured plaintiffs – in contrast to CPI, which excludes housing costs and therefore risks under-compensation.

Comments preferring no index to be prescribed

2.34 One respondent representing the defendant interest recommended not prescribing any index as it would avoid any future issues if the basis for calculating any prescribed index were to change; and it would provide the Government Actuary with flexibility to decide on the index to use should, for example, the inflation of care workers deviate significantly from general earnings inflation.

Other comments

2.35 An independent respondent said that, since CPI and CPIH are expected to be close to each other, it makes little difference which is prescribed (though she noted that CPI is used in the discount rate determination for England and Wales). Her view was that what is important is transparency.

2.36 The individual respondent who preferred CPIH said that the specification of an index should be general rather than specific: the index should not be prescribed by name, thereby facilitating change should its status change in future.

Consultation Question 4

Do you agree that the balance of inflation affecting lump-sum awards of damages in Northern Ireland is likely to be the same as that experienced in England and Wales?

- Yes
- No

Please provide evidence for your view either way.

2.37 Fourteen respondents agreed that the balance of inflation affecting lump-sum awards of damages in Northern Ireland is likely to be the same as that experienced in England and Wales. These included ten respondents representing the defendant interest, two representing the claimant interest, one independent respondent and one anonymous respondent. One respondent – from the claimant side – disagreed. Two respondents – one on the defendant side and one individual – said that they could not answer. One respondent offered two views: one from defendant practitioners, who agreed with the statement; and the other from claimant practitioners, who said they could not answer.

Comments agreeing

2.38 Six respondents, all representing the defendant interest, said that claim composition is structurally similar across the UK, with most referencing in

particular the largest catastrophic injury claims typically involving the same core elements.

- 2.39 Two respondents from the defendant side said that damages inflation in Northern Ireland was likely to reflect that in the rest of the UK; while two others said that they were unaware of factors in Northern Ireland that would affect the balance of inflation differently. To test that view, one of the respondents analysed the breakdown of the sums pleaded in a random selection of ten cases in Northern Ireland valued at more than £1m to see how they split between prices- and earnings-related heads of claim. They found that the mean percentage split between earnings and prices was 75:25 and the median was 76.5:23.5 and suggested that the sample sits “squarely within” the range of 65%–85% earnings that was applied by the expert panel in England and Wales.
- 2.40 One defendant-side respondent noted that, until there is a statistically reliable index that shows a consistent material difference between inflation in Northern Ireland and England and Wales, there is no good reason to adopt anything other than CPI; while another said there was no obvious reason to depart from the inflation assumptions used for England and Wales.
- 2.41 A different respondent on the defendant side, however, noted that some local variation does exist – citing regional differences in housing costs, social care wages and public sector salaries – that may lead to some difference in inflationary pressures faced by claimants. Nonetheless, it concluded that such differences “do not fundamentally undermine the comparison of inflationary drivers”.

Comments disagreeing

- 2.42 A respondent representing the claimant interest said that inflation in Northern Ireland is not exactly the same as in England and Wales, noting that, in July 2024, the experimental CPI inflation rate for Northern Ireland was 3.3%, compared to 2.2% for England and Wales, and that ONS has documented different spending weights between the two jurisdictions on food, housing and

utilities. It concluded, therefore, that the inflation component of the discount rate “should ideally reflect local NI experience rather than assume it is identical across the UK”.

Other comments

2.43 One respondent on the defendant side and an independent individual respondent said that there was insufficient information to be able to answer the question. Three respondents, from both sides, suggested the collection of a specific evidence base for Northern Ireland.

3. Next steps

- 3.1 There was unanimous support for providing more flexibility in relation to how the impact of inflation is to be taken into account by the Government Actuary when setting the personal injury discount rate for Northern Ireland. The Department therefore intends to proceed along these lines.
- 3.2 In respect of how this is to be achieved, although most respondents expressed a preference for giving the rate-setter the ability to adjust an index prescribed in primary legislation rather than giving the Department a power to amend a prescribed adjusted index. The Department, therefore, is not persuaded by the reasons offered in support of this view and intends to take forward the alternative option of prescribing both the measure and the adjustment in legislation. The reasons for the Department's proposed approach are detailed below.
- 3.3 The most common reason for preferring that the adjustment should be made by the rate-setter related to timeliness, with the perceived length of time that it would take to amend the legislation seen as an obstacle to responsiveness. However, as noted in the consultation paper, the Department would be able to amend the primary legislation by secondary legislation, which can be done in much shorter time. Other respondents said that allowing the rate-setter to make the adjustment would provide alignment with England and Wales. This would not necessarily be the case, however, since the Lord Chancellor, advised by the expert panel, would still have discretion to prescribe any index or adjustment, which need not be the same as that used for Northern Ireland.
- 3.4 Another reason cited by respondents was that the adjustment ought to be an actuarial rather than a political decision. However, the ethos of the rate-setting methodology for Northern Ireland is that its key features – including the measure to be used in taking account of inflation – are prescribed in legislation. This provides full transparency and certainty in advance about how each review of the rate will be carried out.

- 3.5 Despite the views expressed in the consultation, the Department takes the view that it is preferable remain consistent with this ethos, particularly as any amendment to the prescribed adjustment could be made relatively quickly by secondary legislation. Some respondents' support for the rate-setter making the adjustment was conditional on a requirement to consult. However, as a matter of course, the Department will consult stakeholders in advance of each review on the need for any amendments to the various elements of the statutory methodology by which the rate is to be set, including the inflation measure.
- 3.6 On the question of which is the best index to prescribe, there was a clear majority of respondents in favour of CPI. As some respondents pointed out, in some sense, with the ability to adjust the index to reflect damages inflation, it doesn't really matter which index is prescribed. Nevertheless, the Department agrees that CPI is preferable, in particular because of its longer history and more common usage and familiarity.
- 3.7 The final question of the consultation was whether or not respondents agreed that the balance of inflation affecting lump-sum awards of damages in Northern Ireland is likely to be the same as that experienced in England and Wales. The large majority of respondents agreed, some observing that claim composition structure is similar across the UK. The one point of disagreement was that inflation in Northern Ireland is not necessarily the same as in Great Britain. The question, however, was not about the rate of inflation itself, but the balance of inflation affecting lump-sum awards (i.e. the balance between prices and earnings inflation). The Department is content that the evidence available suggests that the balance of inflation affecting lump-sum awards in Northern Ireland is not significantly different to elsewhere in the UK.
- 3.8 There is currently no available vehicle within the Department's legislative programme for the current mandate to give effect to the conclusions of this consultation exercise. However, subject to the views of an incoming Minister of Justice and Executive, the Department intends to bring forward legislation in the next mandate to amend the Damages Act 1996 so that the rate-setter must

make allowance for the impact of inflation by reference to an adjusted CPI, with a power for the Department to amend the adjustment by secondary legislation.

List of respondents (excluding individuals):

Association of British Insurers (ABI)

Association of Personal Injury Lawyers (APIL)

Clyde & Co LLP

DAC Beachcroft

DWF Group

The Forum of Complex Injury Solicitors (FOCIS)

The Forum of Insurance Lawyers (FOIL)

JMK Solicitors

Keoghs LLP

The Law Society of Northern Ireland

The Medical and Dental Defence Union of Scotland (MDDUS)

Medical Protection Society (MPS)

The Motor Insurers' Bureau (MIB)

NFU Mutual

Zurich Insurance