



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

New Legal Framework for the Personal Injury  
Discount Rate: Department of Justice

22 October 2020

# NORTHERN IRELAND ASSEMBLY

## Committee for Justice

New Legal Framework for the Personal Injury Discount Rate: Department of Justice

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**Members present for all or part of the proceedings:**

Mr Paul Givan (Chairperson)  
Ms Linda Dillon (Deputy Chairperson)  
Mr Doug Beattie  
Ms Sinéad Bradley  
Ms Jemma Dolan  
Mr Gordon Dunne  
Mr Paul Frew  
Ms Emma Rogan  
Miss Rachel Woods

**Witnesses:**

Ms Jane Maguire	Department of Justice
Ms Laurene McAlpine	Department of Justice
Mr Martin Moore	Department of Justice

**The Chairperson (Mr Givan):** We have departmental officials attending via the StarLeaf facility to provide an outline to the Committee with regard to the consultation and the Department's proposed way forward. The meeting pack includes a memo from the Clerk that could be helpful to members with regard to some of the issues under consideration. Hopefully, I am in a position to welcome officials from the Department once it comes up on my screen — yes, thank you. In the room, we should have Laurene McAlpine, deputy director, civil justice policy division; Ms Jane Maguire, the assistant deputy director, family courts and tribunals branch; and Mr Martin Moore, head of branch, family courts and tribunals. They are all from the DOJ. You are all very welcome to the meeting. It will be recorded by Hansard and a transcript published in due course.

Ms McAlpine, I think that I am handing over to you at this stage.

**Ms Laurene McAlpine (Department of Justice):** Thank you very much, Chairman and members of the Committee, for this opportunity to brief you on the Department's consultation on changing the framework for setting the personal injury discount rate. As our paper to the Committee has indicated, the Minister has a conflict of interest with regard to this matter on account of her husband's membership of a medical defence union. Therefore, the permanent secretary has taken the key policy decisions.

By way of background, the discount rate is a percentage rate, currently set at 2.5%, which is applied to adjust a lump sum award of damages for future losses and expenses in a personal injury case. This adjustment is intended to reflect the amount that can be earned from investing the lump sum, and it is to give effect to the legal principle that an injured person should be fully compensated for their losses,

but no more and no less. That is known as the "100% rule". Although the rate is small in percentage terms, when applied to the investment of a large personal injury award over many years or, more likely, decades, it can equate to a very substantial sum of money.

The power to prescribe the rate in Northern Ireland sits, under the Damages Act 1996, with the Department of Justice, after consultation with the Government Actuary and the Department of Finance. The current basis for setting the rate is the case of *Wells v Wells*, which effectively means setting it with reference to index-linked gilts. Our recent consultation took into account concerns that this does not reflect how claimants are actually investing their damages, and it is likely resulting in a discount rate which does not, in fact, give effect to the 100% rule. We received 28 responses to our consultation, and they are summarised in the summary of responses document, which I believe you have. That document also sets out the Department's conclusions about the next steps.

The key outcome is that we intend to seek Executive agreement to introduce a Bill early in the new year to provide for a new statutory framework that will be very similar to the framework that applies in Scotland. That will involve setting the rate according to a notional portfolio of diversified low-risk investments, with prescribed downward adjustments to take account of certain expenses, and a further deduction which might be called a "margin of prudence" to guard against the risk of claimants being under-compensated. We believe that setting the notional portfolio in legislation offers upfront transparency and clarity. The Scottish model also means that the rate will be set by the Government Actuary rather than by the Minister. This reflects the fact that, once the principles and the legal parameters are established in the legislation, setting the rate is really an actuarial rather than a political exercise.

The other main feature of the new model will be a regular review, at least every five years, to ensure that the rate reflects market conditions, while allowing reasonable periods of stability in between.

As well as consulting on a new legal framework, the Department also undertook a review of the rate under the existing *Wells v Wells* framework and consulted the Government Actuary and the Department of Finance. We have considered that review very carefully and concluded that, on balance, it would be best not to proceed to change the rate at this time under the existing legal framework. This is in view of the decision to legislate for a new framework as soon as possible and under which a new rate would then be set. With that in mind, the Minister intends to ask for accelerated passage for the Bill to set the new framework.

Against that broad background, we are happy to take any questions that the Committee might have.

**The Chairperson (Mr Givan):** OK. Thank you. There are a couple of questions around the substance of what we are considering here.

I will deal with the two procedural areas in the first point. The Minister has a conflict of interest and has allocated the permanent secretary to take the policy decisions on this. How rare is it for a Minister to remove themselves from taking policy decisions? Is it the job of a permanent secretary, who is accountable for how taxpayers' money is spent and implementing policy, to be given that authority?

**Ms McAlpine:** Well, during the suspension of the Assembly, permanent secretaries did take certain decisions, but as far as we are aware, when there is a Minister in post there has been no other case of a permanent secretary taking such decisions. The difficulty is that there is really no alternative, because the Minister does have a very real conflict of interest, and asking the permanent secretary to do this is the only plausible alternative. We took legal advice on the issue, and from that we understand there is no legal obstacle to what is proposed.

**The Chairperson (Mr Givan):** OK. Herein lies the question. Who is going to come before this Committee? Who is going to go into the Assembly Chamber if the Minister has now had to abdicate her responsibility on this? Who is going to speak on the Minister's behalf?

**Ms McAlpine:** We do not see any difficulty with the Minister taking the Bill through the Assembly, because the policy decisions will have been taken and framed in the legislation. Granted, she will have to speak to the Bill in the Assembly, and those are policy decisions that will have been taken by the permanent secretary. If there are any amendments or questions, we recognise that there may be another role for the permanent secretary in dealing with those questions, but we do not see any difficulty with the Minister standing up in the Assembly and moving the Bill.

**The Chairperson (Mr Givan):** Would it not be the normal practice, as Members would do, that you declare an interest and identify what that conflict of interest is? So long as it is well-documented as to what it is, that then does not preclude you from actually taking decisions, so long as you are transparent in revealing your interest. It seems strange to have now removed the Minister from any policy decisions around this.

**Ms McAlpine:** The decisions that could be taken would be so disadvantageous to the medical defence union which the Minister's husband belongs to that it would be quite difficult for her to take them, and she might be criticised for doing so.

**The Chairperson (Mr Givan):** In that context, the majority of the responses to the consultation disagree with your proposal to go down the route of the Scottish model. I am not commenting on whether I support the Scottish model, but the Department is seeking accelerated passage to take it through. So you have a Minister declaring an interest and not taking the policy decisions. The permanent secretary is therefore taking the policy decisions, and this Committee is being asked to relinquish the Consideration Stage, which is its scrutiny mechanism. Does that not strike the Department as being something that exposes it to all levels of risk that should not be necessary? What is the justification for accelerated passage?

**Ms McAlpine:** The Department has a very ambitious legislative programme; we are trying to get five Bills through before the end of the mandate. Having decided to go for the Scottish model, the Bill will be largely technical. That said, of course we recognise that accelerated passage is very much against the norm, and we would not normally suggest it, except that speeding up the legislative process will remove the uncertainty around the discount rate sooner, which can only be to the advantage of claimants and defendants. Colleagues who are in charge of the overall legislative programme have a concern that, if we do not get accelerated passage for this Bill, we are likely to lose the miscellaneous provisions Bill.

**The Chairperson (Mr Givan):** With the greatest respect, that is not the fault of this Committee, and we have a job to do. The Committee will consider that as the justification for the request for accelerated passage, but I am not sure that it will hold much water. What are the levels of political accountability in the Scottish model when it comes to the striking of the rate?

**Ms McAlpine:** The main political accountability comes in the legislation, which sets the principles that apply to governing the portfolio and agreeing the portfolio on the face of the legislation in respect of the deductions to be made. Once those decisions are made by the Assembly, it is just for the Government Actuary to apply them. It is also the case that, before there is any review under the legislation, the Scottish Ministers must satisfy themselves that the portfolio is still appropriate.

**Ms Dillon:** What exactly is the Minister's biggest concern about not using accelerated passage? Is it only the issue around the miscellaneous provisions Bill? A question to both yourselves, the Chair and the staff here: if we did not give accelerated passage, how quickly could we do something? This is a fairly tight piece of legislation with a small stakeholder group, in one sense. I am not saying that there is not a large group of them, but they will mostly be coming at this from the one view. It is not something like the Domestic Abuse Bill or stalking legislation, which are quite different. What kind of time frame could we do something like this in? What is the main concern? Is it the miscellaneous provisions Bill? Obviously, the members of this Committee have concerns; we all want to see some of the things that we have been told will be in that Bill come before this Committee and go through before the mandate ends. We are considering it from both angles, and we just need the most accurate information to make a decision because, as you said, accelerated passage is not the norm, and it is not something that we want to agree to as a Committee. We have just discussed LCMs, and we do not like them either. Anything that does not allow us our role as a scrutiny Committee is not a good way to go. However, based on the information, I suppose we can make the right decision. I would just like a wee bit more information around that. Is the only issue around the miscellaneous provisions Bill?

**Ms McAlpine:** The main priority is to get the new legislation into place as soon as possible. If we have accelerated passage, the plan will be to introduce the Bill in January or February, with Royal Assent in September. If we do not have accelerated passage, then we might not be able to introduce the Bill until September, because the Committee Stage for this Bill would then clash with the Committee Stages for other Bills that are also in the pipeline. I would need to consult with colleagues in charge of the legislative programme. They seem to think that the miscellaneous provisions Bill would then fall off the end, but from my point of view it is about getting the statutory discount rate on to the statute book as soon as possible.

It is a technical Bill. It is about investment products and percentage of investment products and how percentage points should be expressed; if it is not the Government Actuary doing it, it is a deputy Government Actuary. Of course I am not saying that there is not room for the Committee to contribute to the Bill, obviously, but we need to balance that against the desirability of getting the legislation into place as quickly as possible. We do not underestimate at all the implications of an accelerated passage, and it reduces the role of the Committee. I think that, before this can happen, the Minister has to come to the Committee and speak to the matter.

**Ms Dillon:** Chair, I accept that. We have had some conversations before. You are right that the Committee has quite a heavy legislative timetable in this mandate, but that would not preclude us as a Committee from looking at other legislation, or even from looking at a number of pieces of legislation at the same time. I am not saying that it is absolutely ruled out — I do not speak for the Committee — but I am still not absolutely clear why it has to be accelerated passage in order to get it onto the statute book quickly. I agree with you that there may well be reasons, but I am still not really clear on that either — why it absolutely has to be on the books quickly. You said that you want it on as quickly as possible and that that is the desire, but what is the imperative?

**Ms McAlpine:** The reason is that, until claimants and defendants know what the statutory discount rate is going to be, it creates an awful lot of uncertainty for them and for their lawyers in trying to settle cases, because they do not know what the rate is going to be. Until they know that, cases will be delayed and may just back up in the court system, or they will be trying to settle cases in somewhere between the current prescribed rate and what they think the rate might be under the Scottish model. We are really just very anxious to give claimants and defendants as much certainty as possible in order to allow those people who have suffered significant personal injuries to have their claims disposed of and to get the compensation to which they are entitled as quickly as possible. If we cannot introduce it January or February under accelerated passage, it may be September before we can introduce it, which would push back Royal Assent to early the following year, which is not desirable, we think, from the point of view of any parties to litigation.

**Ms Dillon:** Shall we bring in other members, Chair?

**The Chairperson (Mr Givan):** I will bring in other members here, but I am seriously struggling to understand how you can introduce this Bill in January if you are going to get it through accelerated passage. Therefore, the legislation will be drafted and it can be introduced, but, if we do not give you accelerated passage, you are then going to sit on it until September? With respect, it is not the Department's job to tell this Committee how it carries out its work, so there is no reason why the Department cannot allow us, as a Committee, to manage these pressures. If you are saying that you have to wait for the miscellaneous provisions Bill to be dealt with and that you cannot then put through accelerated passage, that is a decision for the Department. It is not a procedural issue for the Committee. It would be your Department deciding that, not the Committee. Explain to me why you cannot allow us to do our job on this Bill and you need to sit on it until September. Who has taken that decision?

**Ms McAlpine:** We have an indicative programme for all five Bills which envisage the Committee dealing with the Committee Stages of Bills in a sequential manner. If the Committee is open to taking a Committee Stage of more than one Bill at a time, then I expect that colleagues would be willing to look again at the legislative programme. It is not that we will be waiting for the miscellaneous provisions Bill before we introduce this; we think that the miscellaneous provisions Bill will just not be possible.

**The Chairperson (Mr Givan):** The Department is planning to introduce the committal reform Bill within the next couple of weeks. Subsequent to that, it is going to introduce the stalking Bill; they are going to overlap. It is not as though the Department has decided, "Let's do committal reform, leave it for six months and then introduce stalking." The Department has already decided to give the Committee two Bills. I am struggling to understand the justification for the request for accelerated passage. The debate around it is actually taking away from wanting to get into whether the Scottish model is the right one or not, because the majority of respondents have actually said that they do not believe that it is.

**Mr Frew:** Thank you. It is good to hear that the officials are concerned about the welfare of the Committee with regards to our workload. When you say that the Bill will be technical in nature, does that mean that we would not understand it?

**Ms McAlpine:** No, I am sure that that is not the case at all. You will understand it, or else it will not have been well drafted, which I am sure will not be the case. It is just going to deal with technical issues which we will all understand, but maybe —. For example, on the notional portfolio there is a list of investment products and how the percentage of the lump sum should be invested in each of the products. There are 5% in gilts, 10% in index-linked gilts and 30% in overseas equities, or something like that. I personally would not be able to contribute to a discussion on whether it should be 30% for overseas equities or some other percentage.

**Mr Frew:** I know that it might be awkward for officials to talk about the interest that the Minister has declared, but it seems to me, if I heard correctly, that the Minister's interests will be disadvantaged by the Bill. If that is the case, is this the Minister washing her hands of the Bill?

**Ms McAlpine:** She is not washing her hands of it at all, because she will be the one having to move it in the Assembly. I am not sure that I agree that the Bill is not in the interests of the medical defence union to which her husband belongs. I think that that group did prefer the English and Welsh model. However, the fact that we are legislating to move away from the Wells v Wells model would, by and large, be seen to be in the interests of insurance companies and unions who support and provide insurance for private medical practitioners.

**Mr Frew:** You say that the request for accelerated passage is because, one, it is a technical Bill, and two, the time pressure and the workload of the Committee — which is very commendable. If the permanent secretary has moved this policy, what has stopped the Department from doing it in the last three years?

**Ms McAlpine:** As soon as the Assembly returned, we issued a consultation paper on reviewing the rates under the current Wells v Wells model, but we could not legislate for a new framework in the absence of an Assembly. We were working with the Ministry of Justice and Scottish Departments over a number of years prior to this on what to do about the statutory discount rate, so it was not as if we just suddenly picked it up in January or February. We felt that there was only so far that we could take this without a Minister.

**Mr Frew:** The divergence in hourly rates has been a subject of discussion for many years. I can recall the previous Justice Committee dealing with it, and I can remember PAC reports on managing legal aid. I think that that was way back in 2016, yet here we are in 2020 and now you are asking for accelerated passage. Does it not seem strange to you that we would be asked to do this so quickly?

**Ms McAlpine:** I am quite sure that the statutory discount rate does not have any bearing on legal aid.

**Mr Frew:** With regard to the sequence of Bills that the Department has, not the Committee, I will offer some reassurance, speaking not on behalf of the Committee, that this Committee and its members are quite thorough and are quite professional at what we do and that the Committee has a staff that is top notch and on top of their game. We will accept as many Bills as you can throw at us in the time left in this term.

**Mr Beattie:** Thank you for answering these questions. I guess that, from the questions that are coming at you, you can see that this is not just a technical Bill but that it is a complex Bill. I do not know whether you answered this, and apologies if you did, but I want to raise something that the Chair raised. The majority of the respondents said that they preferred the English and Welsh model, so why did you say, "No, we are going to go with the Scottish model?" What was the rationale behind that?

**Ms McAlpine:** I am sure that the Committee will agree that the consultation is not just a numbers game. Most importantly, the principles in the English and the Scottish legislation are very similar. They both assume that a claimant will invest in a diversified mix of low-risk investments, and both models are consistent with the principle of achieving 100% compensation, ensuring that money is available to meet expenses as they arise and that it will be exhausted at the end of the period of the award. In Scotland, though, those principles are discharged on the face of the legislation, which prescribes in a table — the notional portfolio — the investments that a claimant is presumed to make and the prescribed deductions that are to be made. The rate is then set on that basis by the Government Actuary. In England and Wales, it is for the Lord Chancellor to set the rate, taking these principles into account and on the advice of a panel of experts whom he is to appoint. He is also to have regard to the actual investments being made by claimants and make allowances for expenses such as he thinks appropriate.

I would have thought that the English model is just that little bit more opaque than the Scottish model. If the Assembly legislates to prescribe the notional portfolio, then everyone knows what they are dealing with up front. That will be a role for the legislature. The legislature will also determine the deductions that are to be made, rather than those, as would be the case under the English model, being something for the Minister to take into account just on the advice of a panel of experts. I have to say that in 2015, I think it was, the Ministry of Justice commissioned a panel of experts to look at issues around the statutory discount rate, and that panel could not reach a consensus. So the role of the panel of experts in England and Wales, even under the model there, is untested as yet. We should have confidence in the Government Actuary to carry out that role on the basis of the legislation that the Assembly will have put in place.

**Mr Beattie:** That is a fair point, and you are absolutely right; consultations are not about numbers. However, it is important enough to be in the consultation and ask the question in the first place. If it was not important, it would not be in there. A lot of this is about the projected cost to the public purse. Do we know what the difference in cost would be between staying as we are with the Wells v Wells model and adopting the English and Welsh model or the Scottish model? Is there a projected cost to the public purse for either of those alternatives?

**Ms McAlpine:** It is almost impossible to give a projected cost for it. That would require us to know the value of all pending personal injury claims against all Departments and trusts, the pecuniary loss element of those claims and the anticipated life span of the claimant. It is only when you have that information that you know what figure you are applying the statutory discount rate to. We have not asked trusts or any other Department to tell us the value of all the claims pending against them. In broad terms, we can say that Wells v Wells is currently 2.5%. If we revised that rate now, it would go down to -1.75 or maybe -2, and that would be very significantly more expensive for the health service and for insurers. However, this is not really about cost; it is about fairness to defendants and claimants and what is the right model in order to ensure the 100% compensation rule.

**Mr Beattie:** Again, you are absolutely right; it is about making sure that claimants get 100%, but there is a cost to the public purse one way or another. Where you cannot look to the future, you can look back to get an understanding of what that would be. You would take the modelling from the previous years to have a better understanding of what the difference would be between staying where we are now and adopting the Scottish model. I guess the reason I am asking questions like this, even though it is a pretty broad-brush one and it is not pointed, is because it goes into the question of accelerated passage. There are so many questions that need to be asked and answers that we need to winkle out. I am sitting here, and I do not even know the right question to ask. I need to be able to delve into this more in order to understand the very nature of the questions that I need to be asking. This will be an incredibly important Bill for the future, and therefore I am in no doubt that it needs the scrutiny that this Committee will give it. My concern is that we need to dig into this a little bit more than we are doing at the moment. *[Interruption.]*

**The Chairperson (Mr Givan):** I am not sure where that is coming from.

**Mr Beattie:** It is a fire alarm.

**Mr Martin Moore (Department of Justice):** There is an alarm going off.

**Ms McAlpine:** That might be our fire alarm.

**The Chairperson (Mr Givan):** I do not want you being stuck in the building if you need to vacate it.

**Ms McAlpine:** We are going to have to go. Sorry.

**The Chairperson (Mr Givan):** OK. No problem.

**Mr Beattie:** Conspiracy theory: we were asking too many questions.

**The Chairperson (Mr Givan):** We can move on to the next item on the agenda. The Committee staff will stay in touch and see whether we get started again in the next half an hour or so.

**Ms McAlpine:** We can join you in the Chamber.

**The Chairperson (Mr Givan):** I could not hear what she said.

**Mr Beattie:** Keep safe.

**The Chairperson (Mr Givan):** Take care.

*The evidence session was suspended from 2.54 pm to 3.43 pm.*

**The Chairperson (Mr Givan):** Members, we will now complete the evidence session from earlier. You should refer back to your papers at pages 122 to 175. Sinéad Bradley had indicated that she wanted to come in. First, I thank the officials for making their way up to the Building. Hopefully, nothing too dramatic was taking place at your building. We appreciate you coming up here. Let us hope that the alarm bells do not start ringing here. I will bring in Sinéad Bradley and then Rachel Woods.

**Ms S Bradley:** Thank you, Chair. I hope that you can hear me.

**The Chairperson (Mr Givan):** We can.

**Ms S Bradley:** Thank you to the officials, for your earlier presentation and for going to the effort of coming up to the Building. I appreciate it.

When I look at this agenda item today, I see a few things that may not in themselves be a red flag, but the cumulative effect of a lot of things raises a flag in my mind for our scrutiny role. To start with, the Minister declared a conflict, which is the right thing to do if there is a conflict. There was then the irregular stepping in of the permanent secretary. Added to that was the proposal to go against the main thrust of what the consultation responses suggested. There was a further compounding of the issue with the talk of accelerated passage and removing the Committee's scrutiny role. The basis for all that being done is the need for urgency, and I presume that the purpose of today's meeting is to communicate to members what the urgency is to justify the need for accelerated passage. I do not want this to be some sort of hurried attempt and for us to try to grapple with the detail, which I do not expect that we will get into today, to weigh up the merits of the proposals. I do not think that we would do it credit if we tried to do that today.

My two questions are as follows. At this stage, I still do not feel that I understand fully the need for urgency. You said that there could be a backlog in the judiciary system and referred to the current rate that has been struck. I presume that that would continue until a commencement date of any new statutory discount rate being struck. I do not understand why that would not keep happening until there was a new commencement date, and I have no understanding of the anticipated numbers of the backlog in the system.

Secondly, I appreciate that the Department wants to work with the Committee on all the issues and on bringing forward legislation, in particular. You have sought the consent of the Committee. Is that a requirement?

**Ms McAlpine:** First, I will address the question about why there would be a backlog, given that there is a current statutory discount rate. The current rate is 2.5%, which everyone, even the insurance companies, recognises as being a bit on the high side. If you are a claimant in a personal injury case, you will not want your case to be disposed of with a statutory discount rate of 2.5%, as that would be to your material financial disadvantage. You will want to wait to see what the final settled rate will be, either a reviewed rate under *Wells v Wells* or a new rate that is set under a new legal framework. You will not want to settle your case, and lawyers are unlikely to push cases into court until they know what the new rate will be.

I cannot honestly speak to the numbers involved in a backlog. In 2019, something like 2,700 personal injury writs were issued. That is not to say that there will be a backlog of 2,700 cases, because those will include cases that are at the very early stages of proceedings, but it gives you some indication of the number of personal injury cases that are taken out in the High Court annually.

Parties will either try to settle the case at something below the 2.5% or wait to see what the new rate will be. If you have a large personal injury case — if you have suffered some sort of catastrophic injury and it looks likely that you will live for 20, 30 or 40 years — the personal injury rate will have a significant effect on the amount of your damages. Therefore, you will not want to take a higher rate than you might have to if it was altered. People are just waiting to see where it will end up.

**The Chairperson (Mr Givan):** OK. Thank you, Sinéad, and thank you, Laurene.

**Miss Woods:** Thank you for coming here. It is much appreciated. This is a new area for me. It has taken me a while to get my head around it, and I cannot say, in all honesty, that I understand everything in the report. That is why scrutiny time would be quite important for me. Whatever happens, it has to be in the best interests of those who are entitled to compensation and to ensure that they get what they deserve. That needs to be front and centre.

I am not a fan of accelerated passage, and I have made that clear throughout the last six months. Unfortunately, it has been a common feature of the legislation introduced by the Executive since February and scrutiny time has been removed. As a non-Executive party MLA, for me, it is very important to get adequate time on legislation.

You mentioned that, if accelerated passage is granted, it could be laid in January or February and in place by September. What is the reason for the seven to eight months, because accelerated passage can be done within 10 days? That has happened where we have had accelerated passage for legislation from the Executive's Ministers previously this year.

I understand that accelerated passage can be justified in certain circumstances, such as urgent and emergency situations. I appreciate your earlier answers, but I am not sure what exactly the urgency is in this situation. Is there a legal urgency in that, for example, it opens the Department up to a legal challenge if this does not come in through accelerated passage? Has any legal advice been taken on that?

I have another question about the rates, but those are my first two.

**Ms McAlpine:** Even when there is accelerated passage, a Bill still has to go through the other normal Assembly stages, including Consideration Stage and Further Consideration Stage. Our colleagues who are in charge of the legislative programme have assumed that, if it is introduced in January or February, it would still take until September for Royal Assent. However, we can give you more detail on that with the breakdown of the individual stages on the accelerated passage route.

**Miss Woods:** I would certainly appreciate that. It is my understanding that 10 days is the minimum time in which a Bill can be brought in under accelerated passage. I am reading what the Assembly's website states about accelerated passage. The seven to eight months may be because the legislative timetable is already booked out. The Assembly's website says:

"Under the Accelerated Passage procedure, a Bill can pass all stages in as little as ten days, but in no less time. This process skips the Committee Stage. Accelerated Passage Procedure requires cross-community support within the meaning of the Act."

I would welcome more information about why, if it was laid in January, it could take up to eight months.

**Ms McAlpine:** Yes, we can write to you about that. On the —.

**The Chairperson (Mr Givan):** Sorry for interrupting. On the accelerated passage aspect, are you saying that, once the Assembly has approved it and it completes the Final Stage, it will take until September for Royal Assent to be given to a Bill that the Assembly passes in January?

**Ms McAlpine:** It would be introduced at the end of January or in February, and it would still have to go through the other Assembly stages.

**The Chairperson (Mr Givan):** Those are all dealt with in the space of 10 days. That is the purpose of accelerated passage. It is so that, when a Bill is introduced, it gets —.

**Mr Moore:** The minimum possible time for accelerated passage is 10 days. In this case, we envisage that we would still go through the other procedures — the Second Stage, Consideration Stage and Further Consideration Stage — and that has been planned out by our colleagues working on the legislative programme.

**The Chairperson (Mr Givan):** Are you saying that you are going to introduce the Bill in January or February and remove the Committee's scrutiny period, in which the Committee could take up to six months, but it will actually take longer than six months to complete the Final Stage in September?

**Ms McAlpine:** If the Committee Stage was in, it would be an additional six months, and it is about trying to manage that with the other Bills.

**The Chairperson (Mr Givan):** Sorry, additional to what?

**Ms McAlpine:** If we have the Committee Stage, which would be for up to six months, we need to factor that in from the introduction in January or February to the Royal Assent in September. That is accelerated passage; it does not take any account of six months for Committee scrutiny.

**The Chairperson (Mr Givan):** That is not accurate. You are wrong. Who is advising you guys on the procedures of the Assembly?

**Ms McAlpine:** We will write to the Committee on the way that we thought that this Bill would be staged under accelerated passage and how we think that it would be staged if accelerated passage was not available. We were trying to take into account the other legislation that would be before the Committee.

**The Chairperson (Mr Givan):** I would be really interested to get the advice that you are being given in the Department on the procedures of the Assembly and where the Committee fits into that, because what you are telling us just is not accurate. It is not the way that the Assembly operates.

**Miss Woods:** Part of my question was about accelerated passage and the 10 days. In my head, that is five working weeks with two plenary days, but maybe I am getting confused now as well. It was my understanding that that was the time between introduction and Royal Assent. We definitely need a wee bit more clarity on that. I would also welcome whatever advice is available about that. Our Committee Stage could take up to six months, but we did an immense amount of scrutiny on the Domestic Abuse and Family Proceedings Bill in a very short space of time. I understand that you might have to factor in up to six months, but we can also do a Committee Stage in half that time on a huge Bill with, as Linda said earlier, a myriad of different aspects to it.

On the question of the legal advice, I am trying to figure out whether there is another aspect of getting accelerated passage. Could there be any legal challenge for not putting this through in this time?

**Ms McAlpine:** We are not aware of any legal challenge, but there is always the risk of a legal challenge, bearing in mind that the discount rate has been at the current level since 2001.

**Miss Woods:** So, there could be a legal challenge. Has the Department got any legal advice on that?

**Ms McAlpine:** We have taken legal advice during the course of this process.

**Miss Woods:** Maybe I cannot get that answer, but has the legal advice brought you to this conclusion?

**Ms McAlpine:** In the round, we think that it is preferable to have the new legislative framework in place as soon as possible in order to let a rate be set under the new framework.

**Miss Woods:** I do not know whether this is in procedure, Chair, but can the Committee request legal advice?

**The Chairperson (Mr Givan):** It can, yes.

**Miss Woods:** That is all that I want to ask on procedure. I have a question about the rate itself; I am just trying to get my head around it. Where did the -1.75 come from? Scotland is -0.75, so if we are going with the Scottish model, where does the extra percentage point come from? If possible, can someone explain to me in layman's terms what that actually does?

**Ms McAlpine:** Our proposal for a change under the existing legal framework was -1.75 because it is a different framework from that which applies in England and Wales and in Scotland. In Northern Ireland, under the Wells v Wells case, the assumption is that a person would invest in index-linked gilts, which is a type of government bond, and it does not give a particularly good rate of return. Our legal framework requires us to assume that claimants are very risk-averse and, therefore, will invest in index-linked gilts. They are not performing well, and it means that, although they are protected against inflation, you are not getting a good return on your money. There is a rate of -1.75% in order to make sure that your lump sum award retains its value for the life of the award.

Scotland, and England and Wales, have set up different arrangements so that the assumption is not that you invest solely in index-linked gilts but that you will invest in a low-risk, diversified portfolio. The Scottish portfolio, for example, assumes that you will invest only 10% in index-linked gilts and that you will invest other percentages of your award in different investment products. When the Government Actuary applies that portfolio, it comes out, along with certain deductions for expenses and so on, at -0.75.

**Miss Woods:** I need to look up what an index-linked gilt is now.

**Ms McAlpine:** In England and Wales, it is -0.25.

**Miss Woods:** In practical terms, do claimants have to invest in index-linked gilts? That is a mouthful to say. Is that part of them getting compensation?

**Ms McAlpine:** No. That is part of the problem. The statutory discount rate is based on the assumption that claimants will invest all their award in index-linked gilts, but there is no evidence that that is what is happening in reality. The Government Actuary has said to us that it is unlikely that anyone would invest all their award in index-linked gilts.

**Miss Woods:** Sorry, this might be a very stupid question, but is this change being proposed for something that, in reality, does not happen?

**Ms McAlpine:** We have to set the discount rate on the assumption that people are investing in index-linked gilts, because that meets the criteria in the Wells v Wells case. We want to move to a legal framework that is probably a more accurate reflection of how claimants, properly advised, would invest, and that would be over a more diversified portfolio. That is what they have done in England and Wales and in Scotland, which is why they have different discount rates from ours.

**Mr Frew:** To lighten the mood and to offer sincere apologies to the officials, I say that I threw a curveball of a question earlier. I am sorry; I do not know how it ended up in the wrong list. Apologies for that. You are good, but you are not that good to answer a question like that.

**The Chairperson (Mr Givan):** Thank you, Paul. You have gone soft.

**Mr Frew:** Yes, or silly; one of the two.

**Ms S Bradley:** Like Rachel, I would love it if we had detail on all the assumptions that are made about what is invested and how people might wisely use or not use their money. When it is spent, it becomes an extra cost to the public purse. We want certainty for people who have an entitlement under this.

Forgive me for going back over this, but I still do not understand it. The question in front of us is whether the Committee agrees to accelerated passage. The argument that I have heard so far is that the reason for accelerated passage is that a backlog is building in the system of people who are hesitant about settling their claim because there is uncertainty around the issue, and that is why we need to do this. However, when I ask the question about numbers or how big that backlog is, there does not appear to be any evidence of its scale or size.

I also want to return to the question of whether it is a requirement. It was said that the Minister would love to work with the Committee. I do not doubt that, and I do not doubt that every member of the Committee wants to ensure that anybody who is due compensation gets it swiftly and at a fair rate. However, I need to understand why it is so urgent to do this.

**Ms McAlpine:** I have a letter from the Association of Personal Injury Lawyers (APIL) who represent personal injury claimants. It says that settlements, in the majority, are on hold. I do not have numbers; I do not know whether I could get them from APIL. However, it stands to reason that, if you were a personal injury claimant, you would want the most advantageous statutory discount rate applied to your settlement. You would know that this debate is going on. There is a lot of interest in whether we are going to legislate or to change the rate and what we are going to do. People are waiting for the music to stop, before they decide whether to settle their case, run it or whatever.

The other issue that was mentioned is the impact that this might have on other Bills in the legislative programme, particularly the Miscellaneous Provisions Bill. I have heard what the Committee said about the programming of legislation. We will go back to colleagues to see whether we have the formulation correct.

**Ms S Bradley:** The Department is looking for the consent of the Committee to accelerated passage, but can the Minister continue without it?

**The Chairperson (Mr Givan):** I can answer that for you, Sinéad: no. Under Standing Order 42, the Minister would need to get cross-community support in the Assembly to proceed with accelerated passage. So, it is not within the gift of the Minister to take that route.

**Ms McAlpine:** The Minister has to come to the Committee as well. This is not a decision that the Committee is being asked to make today.

**The Chairperson (Mr Givan):** That is right. Under Standing Order 42:

*"Where, exceptionally, a Bill ... is thought to require accelerated passage, which shall exclude any Committee Stage, the member in charge of the Bill" —*

in this case, the Minister —

*"shall, before introduction of the Bill in the Assembly, explain to the appropriate committee - (a) the reason or reasons for".*

It then indicates:

*"Before Second Stage" —*

in the Assembly Chamber —

*"the member in charge of the Bill shall move a motion 'That the .... Bill proceed under the accelerated passage procedure'."*

So, the Minister would need to come to the Committee to provide an explanation. The Committee, at that stage, still does not have a veto in that respect, but then it goes to the Chamber for Members to decide whether to grant accelerated passage. That is a decision that, ultimately, the Minister could take, but it would be for Members to vote on it eventually.

**Ms Dillon:** We should get some detail on the procedures rather than that from the DOJ. The procedures in the Assembly are not the speciality of officials in the DOJ, but we need to know that information.

I want to say something to you, as the officials who are going back to the Department. The Chair said this, but I want to be clear. I think that I am speaking on behalf of the Committee and, if I am not, members may dissent quickly. You should work out what the Department can do to bring the legislation to us, and we will work out what we can do. The Department does not need to worry about the Committee; we will work that out and be straight with you about the time that it will take to bring it through. If accelerated passage is not the route, the Committee will endeavour to make the process as speedy as possible. This is a very narrow piece of legislation, so we would be able to do that.

I want to respond to a question that Rachel asked on the discount rate: whether they invest or not, the discount happens, which is why the rate needs to be looked at. I have struggled with that; it has been

in the Committee papers on a number of occasions and I have probably only fully got to grips with it this time. It is difficult to get your head around it. The rate is not our concern, but the framework is.

**The Chairperson (Mr Givan):** It is, yes. There is an immediacy to this. A constituent of mine who has been left paralysed is waiting and has been asking, "When is this rate being changed?". The rate is not currently fair, but I have to set that aside because, once the framework is in, the decision on how you get the rate for future years will be made within that. So, there is an immediacy to this, but there is also a medium- to long-term implication.

In Scotland, they indicated what they believed the cost of their model to be, but has there been an analysis of what it was believed the costs would be and what they transpired to be?

**Ms McAlpine:** In Scotland?

**The Chairperson (Mr Givan):** Yes.

**Ms McAlpine:** I do not know; I cannot answer that.

**The Chairperson (Mr Givan):** One issue to consider in all this is the victim who requires fair compensation and another is that medical practitioners and dental practices, which is where the Minister's conflict is, all need to be able to get adequate insurance. If you have a departure from the insurance industry of people who are going to provide cover, it will increase the costs to the public sector when it comes to the Department of Health. That is the kind of rounded view that people are struggling with, because, obviously, if you push up premiums, you will potentially drive people out of providing services, which is not beneficial to the wider public. I accept that all of this is quite difficult and that a considered view needs to be taken on it, which is why I am struggling to identify the need for the accelerated passage route. I have teased the issue out enough in my own mind at this stage. Neither I nor the other members have any further questions. Thank you for coming up from down below; we appreciate that.

**Ms McAlpine:** You are welcome.

**Ms Dillon:** Thank you. You had a get-out and did not take it, so fair play to you. *[Laughter.]*