1. The ABI welcomes long-overdue reform of the methodology for setting the Discount Rate in Scotland and supports the need for legislation in this area which should deliver a more stable and fairer method for setting the discount rate underpinned by a process that should be more transparent and predictable for all parties.

2. The insurance industry fully supports the principle of 100% compensation, but the current law is not working properly to deliver that. The current rate is based on an incorrect assumption that a claimant invests all their damages in Index Linked Government Securities (ILGS). However, as the Scottish Government recognises in its Policy Memorandum, no properly advised pursuer would ever invest all their damages in ILGS. It is essential that the Discount Rate methodology accurately reflects how injured people are advised to invest their damages and delivers a more modern framework that strikes a fairer balance between the interests of injured people and their compensators.

3. The position in which seriously injured people find themselves means that they should not be required to take the same level of risks with their investments that a normal investor may take; however, all of the evidence underpinning last year’s consultation on setting the Discount Rate demonstrated that adopting a “real world” investment strategy, as currently adopted by injured people, does not equate to “very low risk” investments. The ABI therefore welcomes the move away from the assumption that an injured person is a “very low risk” investor and a move away from using ILGS as the basis for setting the rate.

4. However, we have a number of concerns about aspects of the Bill, which we consider depart from the 100% compensation principle that must be inherent in the setting of the rate:
   - the content of the notional portfolio, which appears over-cautious and needs amended to achieve a better balance of investments;
   - the assumption that the relevant period for investment is 30 years, which is too short; and
   - the additional 0.5% adjustment which is described in the Bill as the “further margin”.

5. The costs associated with paying people more than 100% of their compensation fall on insurers, and ultimately customers; medical professionals; the NHS in Scotland; and other public bodies. It could also be borne by small businesses where claims exceed their insurance limit of indemnity. Ultimately the costs associated with that compensation approach would be met by Scottish consumers and taxpayers.

6. Periodical Payment Orders (PPOs) are important, and are something the ABI supports, as PPOs offer those injured people particularly concerned about longevity, inflation and investment risk a settlement option offering lower risk than a lump sum settlement. The availability of PPOs in Scotland also means that there is no need for the additional 0.5% “further margin” in the Bill as drafted.
7. We are concerned that a discount rate review undertaken every 3 years could drive undesirable behaviours. Serious injury claims can take up to 5 years to settle, so there is a risk that the settlement of claims stalls as a result of speculation around the likely outcome of the next review. Whatever the result of such a review, this behaviour would not ultimately serve the interests of injured people.