

# **Civil Liability (Amendment) Act 2017**

## **Post-Enactment Report**

### **Background**

The Civil Liability (Amendment) Act 2017 was enacted on 22 November 2017. The primary purpose of the Act is to empower the courts to make awards of damages in cases of catastrophic injury by way of periodic payments orders. The Act addresses the concerns raised repeatedly by the courts about the absence of legislation to enable periodic payments orders in appropriate cases.

Briefly, the Act:

- grants courts the power to make awards of damages by way periodic payment orders (PPOs) in cases of catastrophic injury;
- provides that payments under periodic payment orders are secure and will last for the lifetime of the injured party;
- provides that payments will be indexed, initially, in line with the Irish Harmonised Index of Consumer Prices (HICP) and provides for a review of the index after a five year period;
- makes provision for the treatment of periodic payments in bankruptcy; and
- makes provision for the treatment of periodic payments for income tax purposes.

Part 4 of the Act contains detailed provisions on the issue of open disclosure of patient safety incidents.

### **Implementation**

All provisions of the Civil Liability (Amendment) Act 2017 have been brought into operation.

### **Parts 1, 2 and 3 – Periodic Payments Orders**

Parts 1, 2 and 3 of the Act, which deal with periodic payments orders, address the issues raised in the recommendations of the report of the High Court Working Group on Medical Negligence and Periodic Payments (2011), chaired by Mr Justice John Quirke.

The drafting of Rules of Court was required prior to the commencement of Parts 1, 2 and 3 of the Act.

On 25 September, 2018, the Minister for Justice and Equality signed a Commencement Order (S.I. No. 377 of 2018) bringing Parts 1, 2 and 3 of the Act into operation from 1 October 2018.

The Rules of the Superior Courts (Personal Injuries: Periodic Payments Order) 2018 (S.I. No. 430 of 2018), setting out the procedures to be followed in cases involving periodic payment orders, came into operation on 31 October 2018.

### **Part 4 – Open Disclosure of Patient Safety Incidents**

Part 4 of the Civil Liability (Amendment) Act 2017 provides the process and procedures for open disclosure. Part 4 covers the open disclosure of all patient safety incidents, unintended and unanticipated, including near misses. It provides provisions to create a safe space for staff to be open and transparent with patients in order that they would be given as much information as possible, as early as possible, including an apology where appropriate.

On 3 July 2018 the Minister for Health signed the Civil Liability (Amendment) Act 2017 (Part 4) (Commencement Order) 2018 (S.I. No. 231 of 2018). This Order commenced the provisions of Part 4 prescribing of Regulations in relation to open disclosure on 3 July, 2018 and commenced the remaining provisions of Part 4 on 22 September, 2018.

Subsequently, on 4 July 2018, the Minister for Health signed the Civil Liability (Open Disclosure) (Prescribed Statements) Regulations 2018 (S.I. No. 237 of 2018) which came into effect on 23 September 2018.

