

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5045 GIBRALTAR Thursday 13th April 2023

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B. 07/23

## BILL

FOR

AN ACT to amend the Damages Act 2019.

ENACTED by the Legislature of Gibraltar.

### Title.

1. This Act may be cited as the Damages (Amendment) Act 2023.

### Commencement.

2. This Act comes into operation on the day of publication.

### Amendment of the Damages Act 2019.

3.(1) The Damages Act 2019 is amended in accordance with this section.

(2) The long title is amended as follows-

- (a) for the “and” substitute a semi colon;
- (b) after “cases” insert “and to make other provision in relation to damages for personal injury”.

(3) By inserting the following section after section 2-

### “Interpretation.

2A. In this Act, “personal injury” includes any disease and any impairment of a person’s physical or mental condition.”

(4) By inserting the following sections after section 4-

**“Periodical payments.**

- 5.(1) Subject to subsection (3), a court awarding damages for future pecuniary loss in respect of personal injury-
- (a) may order that the damages are wholly or partly to take the form of periodical payments; and
  - (b) shall consider whether to make that order.
- (2) Subject to subsection (3), a court awarding other damages in respect of personal injury may, if the parties consent, order that the damages are wholly or partly to take the form of periodical payments.
- (3) A court may not make an order for periodical payments unless the paying party is the Government, the Gibraltar Health Authority or the Care Agency.
- (4) Where a person has a right to receive payments under an order for periodical payments, or where an arrangement is entered into in satisfaction of an order which gives a person a right to receive periodical payments, that person’s right under the order or arrangement may not be assigned or charged without the approval of the court which made the order; and –
- (a) a court shall not approve an assignment or charge unless satisfied that special circumstances make it necessary; and
  - (b) a purported assignment or charge, or agreement to assign or charge, is void unless approved by the court.
- (5) Where an order is made for periodical payments, an alteration of the method by which the payments are made shall be treated as a breach of the order unless it is approved by the court which made the order.
- (6) An order for periodical payments shall be treated as providing for the amount of payments to vary by reference to the index of retail prices published by the Government Statistician.
- (7) But an order for periodical payments may include provision-
- (a) disapplying subsection (6); or
  - (b) modifying the effect of subsection (6).
- (8) In this section “damages” includes an interim payment which a court orders a defendant to make to a claimant.

- (9) This section is without prejudice to any power exercisable apart from this section.

**Variation of orders and settlements.**

- 6.(1) The Minister with responsibility for Justice may by order enable a court which has made an order for periodical payments to vary the order in specified circumstances.
- (2) The Minister with responsibility for Justice may by order enable a court in specified circumstances to vary the terms on which a claim or action for damages for personal injury is settled by agreement between the parties if the agreement-
- (a) provides for periodical payments; and
  - (b) expressly permits a party to apply to a court for variation in those circumstances.
- (3) An order under this section may make provision-
- (a) which operates wholly or partly by reference to a condition or other term of the court's order or of the agreement;
  - (b) about the nature of an order which may be made by a court on a variation;
  - (c) about the matters to be taken into account on considering variation;
  - (d) of a kind that could be made by rules of court."

**Transitional provisions and savings.**

4. The power conferred by sections 5(1) and (2) of the Damages Act 2019 as inserted by this Act shall be exercisable in proceedings whenever begun.

**EXPLANATORY MEMORANDUM**

This Bill amends the Damages Act 2019 so as to provide for a court awarding damages in respect of personal injury to order that the damages take the form of periodical payments, in certain circumstances.

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