



An Bille um Dhliteanas Sibhialta (Leasú), 2017
Civil Liability (Amendment) Bill 2017

Mar a tionscnaíodh

As initiated



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CIVIL LIABILITY (AMENDMENT) BILL 2017

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Civil Law (Miscellaneous Provisions) Act 2011 (No. 23)

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Civil Liability and Courts Act 2004 (No. 31)

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Insurance Act 1964 (No. 18)

National Treasury Management Agency (Amendment) Act 2000 (No. 39)

Taxes Consolidation Act 1997 (No. 39)



AN BILLE UM DHLITEANAS SIBHIALTA (LEASÚ), 2017
CIVIL LIABILITY (AMENDMENT) BILL 2017

Bill

entitled

An Act to amend the Civil Liability Act 1961 to provide for the award of damages by way of a periodic payments order in certain circumstances where a plaintiff has suffered catastrophic injuries; to amend the Insurance Act 1964; to amend the Bankruptcy Act 1988; to amend the Taxes Consolidation Act 1997; to amend the Civil Liability and Courts Act 2004; and to provide for related matters. 5

Be it enacted by the Oireachtas as follows: 10

PART 1

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Civil Liability (Amendment) Act 2017.
- (2) The Civil Liability Acts 1961 and 1964, Part 2 of the Civil Liability and Courts Act 2004 and *Part 2* of this Act may be cited together as the Civil Liability Acts 1961 to 2017. 15
- (3) This Act shall come into operation on such day or days as the Minister for Justice and Equality may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 20

PART 2

AMENDMENT OF CIVIL LIABILITY ACT 1961

Periodic payments orders - insertion of Part IVB in Civil Liability Act 1961

2. The Civil Liability Act 1961 is amended by the insertion of the following Part after Part IVA (inserted by section 4 of the Civil Law (Miscellaneous Provisions) Act 2011): 25

“Part IVB

PERIODIC PAYMENTS ORDERS

Interpretation (Part IVB)

51H. In this Part—

- ‘Act of 2004’ means the Civil Liability and Courts Act 2004; 5
- ‘activities of daily living’ includes dressing, eating, walking, washing and bathing;
- ‘catastrophic injury’ means, in relation to a person, a personal injury which is of such severity that it results in a permanent disability to the person requiring the person to receive life-long care and assistance in all activities of daily living or a substantial part thereof; 10
- ‘child’ means a person under the age of 18 years;
- ‘Clinical Indemnity Scheme’ means the scheme established by the State under which the State Claims Agency manages clinical negligence claims taken against certain State Authorities and other parties indemnified by the scheme; 15
- ‘General Indemnity Scheme’ means the scheme established by the State under which the State Claims Agency manages negligence claims, other than clinical negligence claims to which the Clinical Indemnity Scheme applies, taken against certain State Authorities; 20
- ‘Insurance Compensation Fund’ means the fund established under section 2 of the Insurance Act 1964;
- ‘Minister’ means the Minister for Justice and Equality;
- ‘paying party’ means the party who is responsible for making payments to a plaintiff under a periodic payments order; 25
- ‘periodic payments order’ has the meaning assigned to it by section 51I;
- ‘State Authority’ has the same meaning as it has in section 7 of the National Treasury Management Agency (Amendment) Act 2000;
- ‘stepped payment’ has the meaning assigned to it by section 51I.

Award of damages by periodic payments 30

- 51I.** (1) Subject to subsection (2) and section 51J, where a court awards damages for personal injuries to a plaintiff who has suffered a catastrophic injury, the court may order that the whole or part of such damages which relate to—
- (a) the future medical treatment of the plaintiff, 35
- (b) the future care of the plaintiff,
- (c) the provision of assistive technology or other aids and appliances associated with the medical treatment and care of the plaintiff, and

- (d) where the parties consent in writing, damages in respect of future loss of earnings,
 be paid by a defendant in the proceedings concerned in the form of periodic payments to the plaintiff in such amounts as the court may determine (in this Part referred to as a 'periodic payments order'). 5
- (2) In deciding whether or not to make a periodic payments order, a court shall have regard to—
 - (a) the best interests of the plaintiff, and
 - (b) the circumstances of the case, including:
 - (i) the nature of the injuries suffered by the plaintiff; and 10
 - (ii) the form of award that would, in the court's view, best meet the needs of the plaintiff having regard to—
 - (I) the amount of any payments proposed to be made to the plaintiff,
 - (II) the form of award preferred by the plaintiff and the reasons for that preference, 15
 - (III) any financial advice received by the plaintiff in respect of the form of the award, and
 - (IV) the form of award preferred by the defendant and the reasons for that preference. 20
- (3) Where the parties to an action to which this Part applies agree to the payment of damages wholly or partly by way of periodic payments to the plaintiff in relation to any matter referred to in paragraphs (a), (b), (c) and (d) of subsection (1)—
 - (a) the parties may apply to the court for a periodic payments order in accordance with the terms which have been agreed by the parties, and 25
 - (b) the court may, subject to subsection (2)—
 - (i) make a periodic payments order in accordance with the terms which have been agreed by the parties, 30
 - (ii) refuse the application, or
 - (iii) refuse the application and make a periodic payments order under subsection (1).
- (4) Where it is anticipated that there will be changes in a plaintiff's circumstances during his or her life which are likely to have an effect on his or her needs, a court may make provision in a periodic payments order that a payment under the order shall, from a specified date, increase or decrease by a specified amount (in this Part referred to as a 'stepped payment'). 35

- (5) The changes in circumstances which may form the basis of a stepped payment include:
- (a) a plaintiff reaching 18 years of age;
 - (b) a plaintiff entering primary or secondary school;
 - (c) a plaintiff entering third level education; and 5
 - (d) anticipated changes in the care needs of a plaintiff, including a requirement that the plaintiff move into residential care.
- (6) Where a court makes a periodic payments order under this section, the order shall specify—
- (a) the annual amount awarded to the plaintiff, 10
 - (b) the frequency of the payments that are to be made to the plaintiff from the annual amount by the paying party,
 - (c) the amount awarded for damages in respect of the matters referred to in paragraphs (a), (b) and (c) of subsection (1),
 - (d) where, further to subsection (1)(d), the periodic payments order includes damages in respect of future loss of earnings by the plaintiff, the amount awarded for such loss of earnings, 15
 - (e) the method by which payments are to be made by the paying party to the plaintiff,
 - (f) that the payments under the order are to be made to the plaintiff during his or her lifetime, 20
 - (g) that the annual amount awarded to the plaintiff will be adjusted in accordance with the Harmonised Index of Consumer Prices as published by the Central Statistics Office or such other index as may be specified by the Minister under section 51L, 25
 - (h) where a stepped payment is provided for—
 - (i) the change in circumstances on which an increase or decrease in the amount of a payment (referred to subsequently in this paragraph as ‘the relevant increase or decrease’) is based,
 - (ii) the date on which the relevant increase or decrease shall take effect, 30
 - (iii) the amount of the relevant increase or decrease at current value, and
 - (iv) that the amount of the relevant increase or decrease shall, on the date that it takes effect, be applied to the annual amount awarded to the plaintiff as adjusted in accordance with the Harmonised Index of Consumer Prices as published by the Central Statistics Office or such other index as may be specified by the Minister under section 51L, 35
- and 40

(i) any other matter that the court considers appropriate.

(7) Where—

(a) a court provides in a periodic payments order for a stepped payment, and

(b) prior to the date that the stepped payment is due to take effect, it is evident to the plaintiff that the anticipated change in the plaintiff's circumstances on which that stepped payment was based will not arise,

the plaintiff shall, as soon as practicable and not later than 10 working days before the date on which the stepped payment is due to take effect, notify the court that made the periodic payments order and the paying party in writing that the anticipated change in the plaintiff's circumstances which formed the basis for the stepped payment concerned will not arise.

(8) Where a court receives a notification under subsection (7) from a plaintiff in relation to a stepped payment specified in a periodic payments order, the court shall amend the periodic payments order concerned by making such adjustments to the order as it considers appropriate.

(9) Where a periodic payments order is amended under subsection (8), the court shall cause a copy of the order as amended to be sent to the plaintiff and the paying party.

Security of periodic payments order

51J. (1) A court may make a periodic payments order where it is satisfied that continuity of the payments under the order is reasonably secure.

(2) In considering whether continuity of the payments under a periodic payments order is reasonably secure, a court shall have regard to the following matters:

(a) whether the payments under the order are guaranteed under the Clinical Indemnity Scheme or the General Indemnity Scheme;

(b) whether the payments under the order are eligible for payment from the Insurance Compensation Fund;

(c) whether continuity of the payments under the order can be guaranteed by other means.

(3) In considering whether other means for guaranteeing payments referred to in subsection (2)(c) are such that continuity of the payments under a periodic payments order would be reasonably secure, a court shall have regard to whether the proposed means for guaranteeing payments under the order—

(a) are such as to be capable of making the proposed payments to a plaintiff during his or her lifetime, and

- (b) are capable of being adjusted in accordance with the Harmonised Index of Consumer Prices as published by the Central Statistics Office or such other index as may be specified by the Minister under section 51L.

Alteration of method of payment

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51K. (1) A paying party may apply to the court to alter the method of payment specified in a periodic payments order.

(2) An application under subsection (1) shall be on notice to—

(a) the plaintiff, or

(b) where the plaintiff has assigned his or her right to payments under a periodic payments order pursuant to section 51M(1), the person to whom the right is assigned.

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(3) A court may, on application to it under subsection (1), approve an alteration to the method of payment specified in a periodic payments order where—

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(a) the plaintiff consents to the altered method of payment,

(b) the court is satisfied that continuity of the payments under the order is reasonably secure notwithstanding the alteration to the method of payment, and

(c) the alteration to the method of payment concerned is capable of adjustment in accordance with the Harmonised Index of Consumer Prices as published by the Central Statistics Office or such other index as may be specified by the Minister under section 51L.

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Indexation of periodic payments

51L. (1) A periodic payments order shall provide for the amount of a payment under the order to be adjusted annually by reference to the Harmonised Index of Consumer Prices as published by the Central Statistics Office or such other index as may be specified under this section.

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(2) The Minister shall, not less than 5 years after the commencement of this Part, carry out a review of the application of the index referred to in subsection (1) (in this section referred to as an ‘initial review’) in order to determine the suitability of that index for the purposes of the annual adjustment of the amount of payments provided for under periodic payments orders.

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(3) The Minister may, 5 years after the initial review and every 5 years thereafter, carry out a review of the application of the index referred to in subsection (1) or such other index as may be specified by him or her under this section, in order to determine the suitability of the index concerned for the purposes of the annual adjustment of the amount of payments provided for under periodic payments orders.

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(4) Subject to subsection (5), where, pursuant to an initial review or a review under subsection (3), the Minister is of the opinion that an

alternative index would be more suitable for the purpose of the annual adjustment of the amount of payments provided for under periodic payments orders, he or she may, with the consent of the Minister for Finance, make regulations specifying the index to be used for that purpose.

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(5) In forming an opinion for the purpose of subsection (4), the Minister shall have regard to—

(a) the relevance of the goods and services on which an index is based to the loss or expenditure, including cost of care and medical expenses, for which plaintiffs who are the subject of periodic payments orders are compensated,

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(b) the body calculating the index,

(c) whether or not the index is accessible at the same time or times each year,

(d) the reliability of the index over time, and

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(e) the reproducibility of the index in the future.

(6) The index specified in regulations under subsection (4) shall apply to an annual adjustment of the amount of a payment to be made under a periodic payments order where the annual adjustment is made after—

(a) the date of the making of the regulations, or

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(b) such later date as may be specified in the regulations.

(7) Regulations under this section shall be laid before each House of the Oireachtas as soon as may be after they are made and if a resolution annulling the regulations is passed by either such House within the next 21 days on which that House has sat after the regulations are laid before it, the regulations shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulations.

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Assignment, commutation or charging of right to periodic payments

51M. (1) Where a plaintiff has a right to receive payments under a periodic payments order, the plaintiff may apply to the court that made the order for approval to assign, commute or charge the right.

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(2) A right to receive payments under a periodic payments order may not be assigned, commuted or charged without the approval of the court that made the order.

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(3) Where a plaintiff, without the approval of the court, purports to—

(a) assign, commute or charge his or her right to receive payments under a periodic payments order, or

(b) enter into an agreement to assign, commute or charge such a right,

the assignment, commutation or charge, as the case may be, shall be void.

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- (4) In considering whether or not to approve a proposed assignment, commutation or charge of a plaintiff's right to receive payments under a periodic payments order, a court shall have regard to—
 - (a) whether the capitalised value of the assignment, commutation or charge represents value for money, 5
 - (b) whether the assignment, commutation or charge is in the plaintiff's best interests, and
 - (c) how the plaintiff will be financially supported following the assignment, commutation or charge, as the case may be.

Appeals

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51N. An appeal shall lie from a decision of the High Court under section 51I, 51J or 51M to the Court of Appeal on a point of law only.

Application and transitional provisions

51O. (1) This Part applies to personal injuries actions relating to catastrophic injuries—

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- (a) that are brought on or after the commencement of *section 2* of the *Civil Liability (Amendment) Act 2017*, or
- (b) in respect of which no final decision has been made on the date of such commencement.

(2) In this section, 'final decision' means—

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- (a) a decision of a court against which no appeal lies or against which an appeal lies within a period which has expired without an appeal having been brought, or
- (b) a decision of a court to approve the terms of a settlement agreed between the parties.”.

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PART 3

AMENDMENTS TO OTHER ACTS

Amendment of section 3 of Insurance Act 1964

3. Section 3 of the Insurance Act 1964 is amended—

- (a) by the insertion of the following subsection after subsection (4):

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“(4A) Where a sum is due to a person under a policy by reason of a periodic payments order, the limitation prescribed by subsection (4) on payment out of the Fund shall not apply to the sum required to meet the liability of the insured under the periodic payments order.”,

- (b) in subsection (5), by the substitution of “Subject to subsection (4A), where” for “Where”, and

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- (c) by the substitution of the following for subsection (8):

“(8) In this section—

‘insurer in liquidation’ means an insolvent insurer or an insolvent insurer authorised in another Member State in respect of which a liquidator, or a person who performs the equivalent function to a liquidator in the Member State concerned, has been appointed;

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‘periodic payments order’ has the same meaning as it has in Part IVB of the Civil Liability Act 1961.”.

Amendment of Bankruptcy Act 1988

4. The Bankruptcy Act 1988 is amended—

(a) in section 3, by the insertion of the following definitions:

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“ ‘Act of 2010’ means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

‘periodic payments order’ has the same meaning as it has in Part IVB of the Civil Liability Act 1961;”,

(b) in section 44—

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(i) in subsection (3)—

(I) in paragraph (b), by the substitution of “by those sections; and” for “by those sections.”, and

(II) by the insertion of the following paragraph after paragraph (b):

“(c) any sum paid to the bankrupt under a periodic payments order, which relates to damages in respect of future loss of earnings.”,

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(ii) in subsection (4)—

(I) in paragraph (a), by the deletion of “or”,

(II) in paragraph (b), by the substitution of “Central Bank Act 1971, and” for “Central Bank Act, 1971.”, and

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(III) by the insertion of the following paragraph after paragraph (b):

“(c) any sum paid to the bankrupt under a periodic payments order, other than a sum referred to in subsection (3)(c).”,

and

(iii) by the insertion of the following subsection after subsection (5):

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“(6) Subsection (5) shall not apply to any sum paid to a bankrupt under a periodic payments order before the discharge or annulment of the adjudication order, other than any part of such sum which relates to damages in respect of future loss of earnings.”,

(c) in section 45—

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(i) by the substitution of the following for subsection (1):

“(1) (a) Subject to paragraph (b), a bankrupt shall be entitled to retain as excepted articles—

(i) any assistive technology or other aids and appliances associated with the medical treatment and care of the bankrupt, his or her spouse or civil partner within the meaning of the Act of 2010, his or her children and any dependent relative residing with him or her, and 5

(ii) such articles of clothing, household furniture, bedding, tools or equipment of the bankrupt’s trade or occupation or other like necessities for the bankrupt, his or her spouse or civil partner within the meaning of the Act of 2010, his or her children and any dependent relatives residing with him or her, as the bankrupt may select. 10

(b) The total value of articles selected by a bankrupt under paragraph (a)(ii) shall not exceed €6,000 or such further amount as the Court may, on an application by the bankrupt, allow.”, 15

and

(ii) in subsection (2), by the substitution of “subsection (1)(a)(ii)” for “subsection (1)”,

(d) in section 47— 20

(i) by the substitution of “Subject to subsection (2), notwithstanding” for “Notwithstanding”,

(ii) by the designation of that section as subsection (1), and

(iii) by the addition of the following subsection:

“(2) Money or securities referred to in subsection (1), which derive from— 25

(a) payments to a bankrupt, before or after adjudication, made under a periodic payments order, other than any part of such payments which relates to damages in respect of future loss of earnings, or

(b) damages or compensation otherwise paid to a bankrupt, before or after adjudication, for a personal injury or loss suffered by him or her, other than any part of such damages or compensation which relates to damages in respect of future loss of earnings, 30

shall not vest in the Official Assignee.”,

and

(e) in section 85D, by the insertion of the following subsection after subsection (7): 35

“(8) A payment which a bankrupt receives, or is entitled to receive, under a periodic payments order, other than any part of such payment that relates to damages in respect of future loss of earnings, shall not be regarded as income or an asset for the purposes of this section.”.

Amendment of Taxes Consolidation Act 1997

5. The Taxes Consolidation Act 1997 is amended by the insertion of the following section after section 189A:

“Exemption in respect of periodic payments for personal injuries

- 189B.** (1) This section shall apply to any payment made to or in respect of an individual— 5
- (a) pursuant to a periodic payments order within the meaning of Part IVB of the Civil Liability Act 1961, or
 - (b) pursuant to any order or other instrument that corresponds to an order referred to in paragraph (a) which is made in accordance with the law of a territory other than the State. 10
- (2) Where, for any year of assessment, an individual is in receipt of a payment to which this section applies, such payment shall be exempt from income tax and shall not be reckoned in computing income for the purposes of the Income Tax Acts.”. 15

Amendment of section 17 of Civil Liability and Courts Act 2004

6. Section 17 of the Civil Liability and Courts Act 2004 is amended—

- (a) by the insertion of the following subsection after subsection (2):

“(2A) Where a formal offer is made in respect of a personal injuries action relating to a catastrophic injury, the formal offer shall specify the proportion of the amount of the formal offer that is attributable to— 20

- (a) the future medical treatment of the plaintiff,
- (b) the future care of the plaintiff,
- (c) the provision of assistive technology or other aids and appliances associated with the medical treatment and care of the plaintiff, and 25
- (d) future loss of earnings of the plaintiff.”,

- (b) in subsection (5), by the substitution of “Subject to subsection (5A), the court” for “The court”,

- (c) by the insertion of the following subsection after subsection (5):

“(5A) (a) Where a court has made a periodic payments order in a personal injuries action, the court shall, when considering the making of an order as to the payment of the costs in the personal injuries action, have regard to— 30

- (i) the terms of any formal offer, other than those terms which relate to the matters referred to in paragraphs (a), (b), (c) and (d) of subsection (2A), and 35
- (ii) the reasonableness of the conduct of the parties to the personal injuries action concerned in making any formal offers.

(b) In determining liability for the part of the costs of the personal injuries action relating to the matters referred to in paragraphs (a), (b), (c) and (d) of subsection (2A), the court shall have regard to—

(i) any offers not expressed to be without prejudice or in terms having like effect, and

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(ii) any offers made without prejudice save as to the issue of costs which were made by or on behalf of a party to the personal injuries action after the commencement of the trial of the action, to effect a settlement of that action.”,

and

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(d) by the insertion of the following definitions in subsection (7):

“ ‘catastrophic injury’ has the same meaning as it has in Part IVB of the Civil Liability Act 1961;

‘periodic payments order’ has the same meaning as it has in Part IVB of the Civil Liability Act 1961;”.

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An Bille um Dhliteanas Sibhialta (Leasú),
2017

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú an Achta um Dhliteanas Sibhialta, 1961 chun socrú a dhéanamh maidir le damáistí a dhámhadh trí ordú íocaíochtaí tréimhsiúla in imthosca áirithe i gcás gur fhulaing gearánaí díobhálacha tubaisteacha; do leasú an Achta Árachais, 1964; do leasú an Achta Féimheachta, 1988; do leasú an Achta Comhdhlúite Cánacha, 1997; do leasú an Achta um Dhliteanas Sibhialta agus Cúirteanna, 2004; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Seanadóir Diarmuid Ó Buitiméir a thíolaic thar ceann an Tánaiste agus Aire Dlí agus Cirt agus Comhionannais a thíolaic,

11 Eanáir, 2017

Civil Liability (Amendment) Bill 2017

BILL

(as initiated)

entitled

An Act to amend the Civil Liability Act 1961 to provide for the award of damages by way of a periodic payments order in certain circumstances where a plaintiff has suffered catastrophic injuries; to amend the Insurance Act 1964; to amend the Bankruptcy Act 1988; to amend the Taxes Consolidation Act 1997; to amend the Civil Liability and Courts Act 2004; and to provide for related matters.

Presented by Senator Jerry Buttimer on behalf of the Tánaiste and Minister for Justice and Equality,

11th January, 2017

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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