

Subsidiary Legislation made under s.6.

Damages (Variation of Periodical Payments) Order 2023**LN.2023/152***Commencement***8.6.2023**

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2019-22

Damages

2023/152 Damages (Variation of Periodical Payments) Order 2023

In exercise of the powers conferred on her by section 6 of the Damages Act 2019, and of all other enabling powers, the Minister with responsibility for Justice has made the following Order—

Title.

1. This Order may be cited as the Damages (Variation of Periodical Payments) Order 2023.

Commencement.

2.(1) This Order shall come into operation on the day of publication.

(2) This Order applies to proceedings begun on or after the day on which it comes into operation.

Interpretation.

3. In this Order,

“agreement” means an agreement by parties to a claim or action for damages which settles the claim or action and which provides for periodical payments;

“damages” means damages for future pecuniary loss in respect of personal injury;

“variable agreement” means an agreement which contains a provision referred to in Article 9(1);

“variable order” means an order for periodical payments which contains a provision referred to in Article 4.

Power to make variable orders.

4. If there is proved or admitted to be a chance that at some definite or indefinite time in the future the claimant will-

(a) as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration;

(b) enjoy some significant improvement, in his physical or mental condition, where that condition had been adversely affected as a result of that act or omission,

the court may, on the application of a party, with the agreement of all the parties, or of its own initiative, provide in an order for periodical payments that it may be varied.

Contents of variable order.

5. Where the court makes a variable order-

- (a) the damages must be assessed or agreed on the assumption that that disease, deterioration or improvement will not occur;
- (b) the order must specify the disease or type of deterioration or improvement;
- (c) the order may specify a period within which an application for it to be varied may be made;
- (d) the order may specify more than one disease or type of deterioration or improvement and may, in respect of each, specify a different period within which an application for it to be varied may be made;
- (e) the order must provide that a party must obtain the court's permission to apply for it to be varied, unless the court otherwise orders.

Applications to extend period for applying for permission to vary.

6. Where a period is specified under Article 5(c) or (d)-

- (a) a party may make more than one application to extend the period, and such an application is not to be treated as an application to vary a variable order for the purposes of Article 7;
- (b) a party may not make an application for the variable order to be varied after the end of the period specified or such period as extended by the court.

Limit on number of applications to vary.

7. A party may make only one application to vary a variable order in respect of each specified disease or type of deterioration or improvement.

Case file.

8.(1) Where the court makes a variable order, the case file documents must be preserved by the court until the end of the period or periods specified under Article 5(c) or (d) or of any extension of them or, if no such period was specified, until the death of the claimant.

(2) The case file documents are, unless the court otherwise orders-

- (a) the judgment as entered;
- (b) the statements of case;
- (c) the schedule of expenses and losses;
- (d) a transcript of the judge's oral judgment;
- (e) all medical reports relied on;
- (f) a transcript of any parts of the claimant's own evidence which the judge considers necessary;
- (g) any subsequent orders.

(3) A court officer must ensure that the case file documents are provided by the parties where necessary and filed on the court file.

(4) Where a variable order has been made, the legal representatives of the parties and, if the parties are insured, their insurers, must also preserve their own case file until the end of the period or periods specified under Article 5(c) or (d) or of any extension of them or, if not such period was specified, until the death of the claimant.

Variable agreements.

9.(1) If there is agreed to be a chance that at some definite or indefinite time in the future the claimant will-

- (a) as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration; or
- (b) enjoy some significant improvement, in his physical or mental condition, where that condition had been adversely affected as a result of that act or omission,

the parties to an agreement may agree that a party to it may apply to the court subsequently for its terms to be varied.

(2) Where the parties agree to permit an application to vary the terms of an agreement, the agreement-

- (a) must expressly state that a party to it may apply to the court for its terms to be varied;

- (b) must specify the disease or type of deterioration or improvement;
- (c) may specify a period within which an application for it to be varied may be made;
- (d) may specify more than one disease or type of deterioration or improvement and may, in respect of each, specify a different period within which an application for it to be varied may be made.

(3) A party who is permitted by an agreement to apply for its terms to be varied must obtain the court's permission to apply for it to be varied.

Application for permission.

10.(1) An application for permission to apply for a variable order or a variable agreement to be varied must be accompanied by evidence-

- (a) that the disease, deterioration or improvement specified in the order or agreement has occurred; and
- (b) that it has caused or is likely to cause an increase or decrease in the pecuniary loss suffered by the claimant.

(2) The respondent to the application may, within 28 days after service of the application, serve written representations on the applicant and, if he does, must file them with the court.

(3) The court will deal with the application without a hearing.

Refusal of permission.

11.(1) Where permission is refused, the applicant may, within 14 days after service of the order, request the decision to be reconsidered at a hearing.

(2) No appeal lies from an order refusing permission after reconsideration.

Grant of permission.

12.(1) Where permission is granted, the court will also give directions as to the application for the variation of the variable order or the variable agreement.

(2) Directions must include directions as to-

- (a) the date by which the application for variation must be served and filed;

- (b) the service and filing of evidence.
- (3) No appeal lies from an order granting permission.

Order for variation.

13.(1) On an application for the variation of a variable order or a variable agreement, if the court is satisfied-

- (a) that the disease, deterioration or improvement specified in the order or agreement has occurred; and
- (b) that it has caused or is likely to cause an increase or decrease in the pecuniary loss suffered by the claimant,

it may order-

- (i) the amount of annual payments to be varied, either from the date of the application for permission or from the date of the application to vary, or from such later date as it may specify in the order;
- (ii) how each payment is to be made during the year and at what intervals;
- (iii) a lump sum to be paid in addition to the existing periodical payments.

(2) Section 5(3) to (7) of the Act applies to orders under this Order as it applies to orders for periodical payments.

Application of rules of court.

14. The Civil Procedure Rules, as applied by section 38A of the Supreme Court Act, apply to applications under this Order with such modifications as may be required, except where this Order makes provision inconsistent with the Civil Procedure Rules,.