



**An Bille um Bord Measúnaithe Díobhálacha Pearsanta
(Leasú) (Uimh. 2), 2018**
**Personal Injuries Assessment Board (Amendment) (No.
2) Bill 2018**

Meabhrán Mínitheach
Explanatory Memorandum



**AN BILLE UM BORD MEASÚNAITHE DÍOBHÁLACHA
PEARSANTA (LEASÚ) (UIMH. 2), 2018
PERSONAL INJURIES ASSESSMENT BOARD (AMENDMENT)
(NO. 2) BILL 2018**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to amend the Personal Injuries Assessment Board Acts 2003 and 2007 to strengthen the Personal Injuries Assessment Board (PIAB) in terms of operational issues to ensure greater compliance with the PIAB process and encourage more claims to be settled through the PIAB model.

The Cost of Insurance Working Group Report on the Cost of Motor Insurance (January 2017) made a number of recommendations in relation to strengthening the PIAB model. Recommendation 15 states, “Assess within the current review of the PIAB legislation, cases of non-cooperation such as non-attendance at medicals and refusal to provide details of special damages”. Recommendation 19 states, “examine the frequency of future Book of Quantum updates in terms of any future changes to its production”.

The Report on the Rising Costs of Motor Insurance from the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach (October 2016) also recommended enhancing the powers of PIAB.

The outcome of a public consultation on the Personal Injuries Assessment Board Acts in 2014 and recommendations in the above-mentioned Reports informed the content of the Bill.

Provisions of the Bill

Section 1 provides for the definition of the “Principal Act”.

Section 2 provides for amendment of *section 13* of the Principal Act in relation to the documentation required by the Board before formal notification shall be served on a respondent to ascertain his or her wishes in relation to an assessment by the Board of the claim. A formal notice will only issue to a respondent when an application, a report prepared by a medical practitioner in respect of the personal injuries and the fee have been received from the claimant by the Board.

If the application is not accompanied by a medical report and/or the fee, the Board may issue a preliminary notification to the respondent that a claim has been received identifying them as the person the claimant holds responsible for their injuries. However, the respondent will not be obliged to consider the consenting to an assessment being made in the absence of a medical report and/or the fee.

Section 3 is a consequential amendment and amends *section 14* of the Principal Act by substituting the term “a notice under section 13” with “a notice under section 13(1)(b)”.

Section 4 provides for amendment to *section 17* of the Principal Act regarding the discretion of the Board not to arrange for the making of an assessment in certain situations as set out in *section 17*. The amendment provides for additional categories of claim where the Board has discretion not to proceed with an assessment. This, for example, will allow for situations where the Board is unable to serve statutory documents, or where the respondent has notified the Board of his/her intention to reject any assessment when made or where the claim falls within a claim to which Regulation (EC) No. 864/2007 of the European Parliament and the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) applies or where a settlement has been negotiated in respect of a minor or persons of unsound mind to be approved by court. In these circumstances, the resolutions of such claims are being delayed while in the Board’s process.

Section 5 provides for amendment to *section 22* of the Principal Act to allow for different levels of charges levied by the Board on claimants and respondents for submitting electronic and paper formats of documents to them. As it is cheaper to submit and process documents electronically, this should be incentivised. There is also provision for PIAB to levy staged charges on the respondent for the various stages of the claims assessment process.

Section 6 provides for amendment of *section 49* of the Principal Act by substituting the term “the notice served under section 13(1)(b)” for “the notice under section 13”.

Section 7 provides for amendment to *section 50* of the Principal Act to ensure consistency in the disapplication of limitation periods under the Statute of Limitations within the PIAB process and to rectify any discrepancies arising from interpretations of the *Reghan v T & S Taverns [2015] IESC 8* judgement. The amendment provides that following an application to the Board under *section 11* and where subsequent respondents are added to the claim, the date that the Statute of Limitations is stopped against each respondent, is the date that individual respondent is added to the claim and ending 6 months from the date of issue of an authorisation.

Section 8 provides for amendment to *section 51* of the Principal Act by the insertion of a new section 51C to deal with cases of non-compliance with a request by the Board under *sections 23* or *24*. Where a claimant fails to supply details of his/her claim for special damages or where the claimant fails to attend a medical examination arranged by PIAB, or where the claimant has failed to assist/co-operate with retained experts, the Board is obliged to carry out the assessment. The assessment will not reflect the appropriate value of the claim and may therefore be rejected by the claimant. Upon rejection, the Board releases the case and issues an authorisation to the claimant that allows the claimant to bring legal proceedings.

To deter non-compliance with the PIAB process, *section 8* introduces certain constraints in any subsequent legal proceedings in terms of legal costs whereby the Court has discretion to make an order on what costs, if any, it will allow the claimant. The Court can also order the claimant to pay all or a portion of the costs of the respondent. The amendment also provides for constraints regarding legal costs for non-compliance by a respondent to a request by an assessor for information or documents or to assist/cooperate with retained experts.

The Court will have discretion regarding what costs, if any, it will allow the respondent. This should contribute to maximising the use of the PIAB model, encouraging higher levels of consent to assess claims and increasing acceptance rates of awards.

Section 9 provides for amendment to *section 54* of the Principal Act so that the Board shall review and update the Book of Quantum every three years, or sooner if the Board decides it is necessary.

Section 10 provides for amendment to *section 54A* of the Principal Act to give the Board power to obtain information from individuals/bodies to provide data for the purpose of the Board fulfilling all of its functions in terms of preparing and publishing the Book of Quantum and, collecting and analysing data in relation to amounts awarded or agreed in settlement of civil actions for which this Act applies, and not just in relation to the Board's function regarding the making of a cost benefit analysis. The section also provides for an offence where a person contravenes subsection (1).

Section 11 provides for amendment to *section 56* of the Principal Act regarding the composition of the Board to fully reflect Government policy that, in so far as appropriate, appointments to the Board of non-commercial Bodies are appointed from expressions of interest of candidates with the desired skills and expertise, following a Public Appointments Service process.

Section 12 provides for amendment to *section 57* of the Principal Act in that Board Members cannot serve more than 10 years on the Board. This is consistent with the 2016 Code of Practice for the Governance of State Bodies. Provision is also made that where a Board member is nominated to the Seanad, or becomes an elected representative of the Oireachtas, the EU Parliament or a member of a Local Authority, he/she may no longer serve as a Board member.

Section 13 amends *section 74* of the Principal Act with the insertion of a new section 74A and provides that the Board shall remit to the Minister, for the benefit of the Exchequer, any monies in excess of those authorised to be retained by the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 14 provides for amendment of *section 79* of the Principal Act regarding the service of documents by the Board. It provides that the Board can serve a notice or document electronically where the person concerned has given consent for the notice or document to be served in this manner.

The section also provides that documents can be served using a document exchange service provided the person concerned has given consent that he or she will accept service in this manner.

Section 15 provides the short title of the Bill, as well as the citation and makes provision for enactment by Statutory Instrument.

*An Roinn Gnó, Fíontar agus Nuálaíochta,
Lúnasa, 2018.*