

Draft Order laid before Parliament under paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2020 No.

DAMAGES, ENGLAND AND WALES

The Fatal Accidents Act 1976 (Remedial) Order 2020

Made - - - - *******

Coming into force in accordance with regulation 1

The damages that may be awarded in respect of a claim for bereavement under section 1A of the Fatal Accidents Act 1976(1) have been declared(2) under section 4 of the Human Rights Act 1998(3) to be incompatible with a Convention right(4).

The time for bringing an appeal has expired and no appeal was made within that time.

The Secretary of State considers that there are compelling reasons for proceeding by way of remedial order(5) to make such amendments to the Fatal Accidents Act 1976 as the Secretary of State considers necessary to remove the incompatibility.

In accordance with paragraph 2(a) of Schedule 2 to the Human Rights Act 1998, a draft of this instrument was laid before Parliament and was approved by resolution of each House of Parliament, a document containing a draft of this instrument having previously been laid before Parliament in accordance with paragraph 3(1) of that Schedule.

Accordingly, the Secretary of State makes the following Order in the exercise of the powers conferred by section 10(2) of, and paragraph 1(1)(a) and (d), (2)(a) and (3) of Schedule 2 to, the Human Rights Act 1998.

Citation, commencement and extent

1.—(1) This Order may be cited as the Fatal Accidents Act 1976 (Remedial) Order 2020 and comes into force on the 21st day after the day on which it is made.

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- (1) 1976 c.30. Section 1A was inserted by the Administration of Justice Act 1982 (c.53), s 3 and amended by the Civil Partnership Act 2004 (c.33), s 83(1) and (7), and S.I. 2013/510.
- (2) By the Court of Appeal in the case of *Jacqueline Smith v Lancashire Teaching Hospitals NHS Foundation Trust and others* [2017] EWCA Civ 1916.
- (3) 1998 c.42. Section 4 was amended by paragraph 66(2) of Schedule 9 to the Constitutional Reform Act 2005 (c. 4); paragraph 156 of Schedule 16 to the Armed Forces Act 2006 (c. 52); paragraph 43 of Schedule 6 to the Mental Capacity Act 2005 (c. 9) and paragraph 5(5) of Schedule 14 to the Crime and Courts Act 2013 (c. 22).
- (4) See section 1(1) of the Human Rights Act 1998 for the meaning of “the Convention rights” and section 21(1) of that Act for the definition of “the Convention”.
- (5) See section 21(1) of the Human Rights Act 1998 for the definition of “remedial order”.

(2) The amendments made by this Order apply only to causes of action which accrue on or after the day on which this Order comes into force.

(3) Any amendment made by this Order has the same extent as the provision which it amends.

Amendments to the Fatal Accidents Act 1976

2.—(1) Section 1A of the Fatal Accidents Act 1976 is amended as follows.

(2) After subsection (2)(a) (and before the “and”) insert—

“(aa) of the cohabiting partner of the deceased;”.

(3) After subsection (2) insert—

“(2A) In subsection (2) “cohabiting partner” means any person who—

- (a) was living with the deceased in the same household immediately before the date of the death; and
- (b) had been living with the deceased in the same household for at least two years before that date; and
- (c) was living during the whole of that period as the wife or husband or civil partner of the deceased.”.

(4) In subsection (4)—

- (a) for “this section” substitute “subsection (2)(a) and (aa), or under subsection (2)(b),”; and
- (b) for “both the parents of the deceased” substitute “more than one person”.

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

Section 1A of the Fatal Accidents Act 1976 (c.30) (the “Act”) provides for a fixed sum of bereavement damages to be awarded to a limited category of persons in the event of a fatal accident caused by wrongful act, neglect or default.

In the case of *Jacqueline Smith v Lancashire Teaching Hospitals NHS Foundation Trust and others* [2017] EWCA Civ 1916, the Court of Appeal made a declaration of incompatibility in relation to section 1A of the Act, on the basis that limiting the category of persons eligible for bereavement damages to the wife, husband or civil partner of the deceased (or, in the case of a minor who has never married or been a civil partner, the parents of the deceased) was contrary to Article 14, in conjunction with Article 8, of the European Convention of Human Rights.

This Order amends section 1A of the Act to provide that a cohabiting partner may be eligible for bereavement damages, in addition to the wife, husband or civil partner of the deceased (or, in the case of a minor who has never married or been a civil partner, the parents of the deceased). For these purposes cohabiting partner means any person who, immediately prior to the deceased’s death, had been living as wife, husband or civil partner of the deceased for a period of at least 2 years.

Article 2(4) amends section 1A(4) of the Act to provide that, where more than one person is entitled to an award of bereavement damages, the award must be shared equally between them. Previously this provision applied only where both parents may be entitled to an award under section 1A(2)(b), because there was no possibility of an award being payable to more than one person under section 1A(2)(a) or an award being payable under both section 1A(2)(a) and (2)(b). A possibility now exists for an award to be payable to more than one person under subsection (2)(a) and (2)(aa) as a result of the amendments made by article 2(2) and (3), and the amendment made by article 2(4) caters for that possibility.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.