

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.