

**EXPLANATORY MEMORANDUM TO
THE DAMAGES FOR BEREAVEMENT (VARIATION OF SUM) (ENGLAND
AND WALES) ORDER 2013**

2013 No. 510

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends section 1A(3) of the Fatal Accidents Act 1976 by increasing the sum which may be awarded as damages for bereavement in England and Wales by 10%, from £11,800 to £12,980.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Under section 1A(5) of the Fatal Accidents 1976 (as inserted by the Administration of Justice Act 1982) the Lord Chancellor has the power by Order to change the level of bereavement damages in England and Wales. The power is subject to the negative resolution procedure in Parliament.

4.2 Lord Wallace of Tankerness gave a commitment, on 30 January 2012, during Lords Committee stage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that the Government would increase bereavement damages by 10% to come into force at the same time as the provisions in Part 2 of the Act. Those provisions will come into force on 1 April 2013.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Justice has made the following statement regarding Human Rights:

In my view the provisions of the Damages for Bereavement (Variation of Sum) (England and Wales) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Bereavement damages can only be claimed where the death is a result of another's wrongful act, neglect or default, and are currently available to the deceased's spouse or civil partner, or, if the deceased was under 18 and had never been married, to the deceased's parents. The level of bereavement damages was last increased from £10,000 to £11,800 in respect of causes of action which accrue on or after 1 January 2008.

7.2 During the passage of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 the question was raised as to whether the bereavement damages award would be increased in line with the 10% increase in general damages recommended by Lord Justice Jackson and whether the proposed success fee for legal representatives (capped in personal injury claims at 25% of clients' damages, excluding future losses) would be deductible from such an award. The 10% increase in general damages (i.e. those for pain, suffering and loss of amenity) is being taken forward by the judiciary following the judgement of the Court of Appeal on 10 October 2012 in the case of *Simmons v Castle*. This confirmed the types of cases to which the 10% increase in general damages would apply when the reforms take effect on 1 April 2013.

7.3 Technically, bereavement damages are statutory damages which do not form part of the damages for non-pecuniary loss for pain, suffering and loss of amenity which are subject to the 10% uplift. However, they will form part of the damages which will be subject to the 25% cap being taken as a success fee (that is, they will not be protected in the same way that damages for future loss will be). Therefore the Government considers that it is appropriate to uprate the level of bereavement damages in line with the 10% increase in general damages.

8. Consultation outcome

8.1 A Ministry of Justice consultation on the law on damages was published in May 2007, which included questions on the issue of bereavement damages. The response to that consultation published on 1 July 2009 confirmed that the award of bereavement damages should continue to be available. This order provides for a 10% increase in the level of bereavement damages awards in light of, and in order to be consistent with, the 10% increase in general damages recommended by Lord Justice Jackson. That 10% increase in general damages was the subject of consultation as part of the Ministry of Justice consultation paper *Proposals for Reform of Civil Litigation Funding and Costs in England and Wales*¹ published in November 2010.

9. Guidance

9.1 The order does not alter the way that the legislation operates beyond uprating the level of the award to be made under the Act. Therefore no guidance is necessary.

¹ <http://www.justice.gov.uk/downloads/consultations/jackson-consultation-paper.pdf>

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument since it does not impose or remove burdens for business or civil society organisations. Nor is the intention of the instrument to impose costs on business or civil society organisations. Any costs that businesses do incur will only relate to circumstances where that business is found liable in negligence in respect of a person's death. The provisions will not impose a burden of £5million or over on the public sector nor will it lead to any kind of redistribution affecting public, private or civil society organisations.

11. Regulating small business

11.1 The legislation applies to small business but as explained above the provisions are not regulatory and small businesses will only incur costs in cases where they have been negligent.

12. Monitoring & review

12.1 The Government keeps the level of bereavement damages under review and they have been periodically updated since their introduction in 1982.

13. Contact

Paul Norris, Ministry of Justice, tel: 020 3334 3220, email: Paul.Norris@justice.gsi.gov.uk can answer any queries regarding the instrument.