

Civil Law Reform Bill

A BILL

To

Amend the Fatal Accidents Act 1976; to make provision about the award of damages for personal injury in respect of a gratuitous provision of services; to enable an award of aggravated damages or a restitutionary award to be made in certain cases; to make provision about powers of courts to award interest; to make provision about the distribution of estates of deceased persons; and to make provision about rights of appeal.

PART 1

DAMAGES

Fatal accidents

1 Extension of right of action

(1) Section 1 of the Fatal Accidents Act 1976 (right of action for wrongful act causing death) is amended as follows.

(2) In subsection (3), at the end insert—“;

(h) any person not falling within any of paragraphs (a) to (g) who was being maintained by the deceased immediately before the death”.

(3) After subsection (6) add—

“(7) For the purposes of this Act, a person (A) is maintained by another person (B) if B, otherwise than for full valuable consideration, makes a substantial contribution in money or money’s worth towards A’s reasonable needs.”

2 Assessment of damages: effect of remarriage etc

(1) Section 3 of the Fatal Accidents Act 1976 (assessment of damages) is amended as follows.

(2) For subsection (3) substitute—

“(3) In assessing the damages to be awarded to a dependant, the court must take into account the fact that since the death the dependant has—

- (a) married or remarried,
- (b) entered into a civil partnership, or
- (c) entered into a relevant relationship.”

(3) After subsection (3) insert—

“(3A) In assessing the damages to be awarded to a person who is a child of the deceased, the court may take into account the fact that since the death the surviving parent of that child has—

- (a) married or remarried,
- (b) entered into a civil partnership, or
- (c) entered into a relevant relationship.

(3B) For the purposes of this section a person (A) has entered into a relevant relationship if—

- (a) at the time when the action is brought, A lives with another person (B) as B’s husband or wife or civil partner,
- (b) A has been so living with B for at least 2 years, and
- (c) A is maintained by B.”

3 Assessment of damages: possibility of relationship breakdown

(1) Section 3 of the Fatal Accidents Act 1976 (assessment of damages) is amended as follows.

(2) After subsection (3B) (inserted by section 2) insert—

“(3C) In assessing the damages to be awarded to a person who is a dependant by virtue of section 1(3)(a) or (aa), the court may, if subsection (3D) applies, take into account the prospect (if the deceased had not died) of the dependant’s marriage or civil partnership to the deceased being annulled or dissolved.

(3D) This subsection applies if—

- (a) the dependant or the deceased had—
 - (i) petitioned for divorce, judicial separation or nullity of marriage, or
 - (ii) applied for an order to dissolve or annul the civil partnership, or
- (b) immediately before the date of the death, the dependant and the deceased were no longer living together.

(3E) But in assessing the damages to be awarded to a person who is a dependant by virtue of section 1(3)(b), the court may not take into account the prospect (if the deceased had not died) of the dependant ceasing to be in the relationship in question.”

4 Assessment of damages: effect of lack of right to financial support

In section 3 of the Fatal Accidents Act 1976 (assessment of damages), omit subsection (4).

5 Damages for bereavement

(1) Section 1A of the Fatal Accidents Act 1976 (damages for bereavement) is amended as follows.

(2) In subsection (2), after paragraph (a) insert—

- “(aa) of a person who had been living with the deceased as the deceased’s husband or wife or civil partner for a period of at least 2 years ending with the date of the death;
- (ab) of a child of the deceased who was aged under 18 at the date of the death;”.

(3) In that subsection, in paragraph (b)—

- (a) for “a minor who” substitute “aged under 18 and”,
- (b) after “civil partner” insert “, of the deceased’s parents.”, and
- (c) omit sub-paragraphs (i) and (ii).

(4) In subsection (3), after “this section” insert “on a claim for the benefit of a person within subsection (2)(a), (aa) or (b)”.

(5) After that subsection insert— “(3A) The sum to be awarded as damages under this section on a claim for the benefit of a person within subsection (2)(ab) shall, in the case of each person to whom the claim relates, be a sum equal to half the sum for the time being specified in subsection (3) (subject to any deduction falling to be made in respect of costs not recovered from the defendant).”

(6) After subsection (3A) insert— “(3B) Where there is both a claim for damages under this section for the benefit of a person within subsection (2)(a) and a claim for damages under this section for the benefit of a person within subsection (2)(aa), the sum awarded is to be divided equally between them (subject to any deduction falling to be made in respect of costs not recovered from the defendant).”

(7) After subsection (4) insert—

“(4A) The references in this section to the deceased’s parents are references to the persons who, at the date of the death, had parental responsibility (within the meaning of the Children Act 1989) for the deceased.”

6 Minor amendment

In section 1(3) of the Fatal Accidents Act 1976 (definition of dependant), for paragraph (b) substitute—

“(b) any person who has been living with the deceased as the deceased’s husband or wife or civil partner for a period of at least 2 years ending with the date of the death;”.

7 Damages for gratuitous services

(1) Subsection (2) applies if, on a claim for damages for personal injury, a court awards damages to the injured person in respect of a gratuitous provision of services to that person.

(2) The injured person must account to—

- (a) such persons as provided the services before the date of the award, and
- (b) such persons as provided the services on or after that date.

(3) A court must not refuse to award damages in respect of a gratuitous provision of services merely because the person providing the services is the defendant.

(4) But a court may not award damages in respect of a gratuitous provision of services by the defendant to the injured person for any period before the date of the award (and accordingly subsection (2)(a) does not apply).

(5) In this section—

- (a) “personal injury” includes any disease and any impairment of a person’s physical or mental condition;
- (b) the references to providing services include, in particular, a reference to—

- (i) providing the injured person with personal care;
- (ii) carrying out tasks as part of running or maintaining the home or supporting the injured person's domestic or family life;

(c) services are provided gratuitously if the person making the provision does so without having any legally enforceable right to payment in respect of the provision.

8 Awards of damages under the Fatal Accidents Act 1976

- (1) The Fatal Accidents Act 1976 is amended as follows.
- (2) After section 3 insert—

“3A Damages for gratuitous services provided by the deceased

- (1) A court assessing an injury to a dependant for the purposes of section 3(1) may treat that injury as including the loss to a person of gratuitously providing services to the dependant which the deceased would have provided but for the death.
- (2) If the dependant recovers damages for the loss referred to in subsection (1), the dependant must account to—
 - a) such persons as provided the services before the date of the award of the damages, and
 - b) such persons as provided the services on or after that date.
- (3) The court must not refuse to exercise the power under subsection (1) merely because the person providing the services is the defendant.
- (4) But the court may not award damages in respect of a gratuitous provision of services by the defendant to the dependant for any period before the date of the award (and accordingly subsection (2)(a) does not apply).
- (5) In subsection (2) the references to the dependant include a reference to the dependant's personal representatives.
- (6) In this section the references to gratuitously providing services are to be construed in accordance with section 7 of the Civil Law Reform Act 2010.”

Aggravated damages and restitutionary awards

9 Power to award aggravated damages etc

- (1) In section 13(2) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (power to award exemplary damages where judgment is enforced without permission of the court), for “exemplary” substitute “aggravated”.
- (2) In paragraph 12(4) of Schedule A1 to the Patents Act 1977 (power to award additional damages for providing false information)—
 - (a) after “sub-paragraph (3)” insert “(whether brought by an individual or a body)”,
 - and
 - (b) for “such additional damages” substitute “such aggravated damages and such amount by way of restitution”.
- (3) Section 97(2) of the Copyright, Designs and Patents Act 1988 (power to award additional damages for copyright infringement) is amended as follows—

- (a) after “copyright” insert “(whether brought by an individual or a body)”, and
- (b) for “such additional damages” substitute “such aggravated damages and such amount by way of restitution”.

PART 2

INTEREST

10 Power to award interest on debts and damages

- (1) This section applies in relation to proceedings in the High Court or a county court for the recovery of a debt or damages.
- (2) The court may include interest in the whole or part of any sum for which it gives judgment for the whole or part of the relevant period.
- (3) If the defendant pays the whole debt to the claimant otherwise than in pursuance of a judgment, the court may order the defendant to pay interest to the claimant on the whole or part of the debt for the whole or part of the relevant period.
- (4) Interest awarded under this section runs at the rate specified in, or determined in accordance with, an order under section 12(1)(b)(i).
- (5) Whether interest under this section is to be simple interest or compound interest is to be determined in accordance with an order under section 12.
- (6) The relevant period is the period beginning with the date when the cause of action arose and ending—
 - (a) in the case of a sum for which judgment is given, with the date of the judgment, or
 - (b) in the case of a sum paid before judgment or without judgment being given, with the date of the payment.
- (7) But a court may not exercise the power under this section to award interest in respect of a debt or damages for a period during which, for whatever reason, interest on the debt or damages already runs.
- (8) In relation to a judgment given for damages for personal injury or death which exceed £200, subsection (2) applies as if for “The court may” there were substituted “Unless there are special reasons to the contrary, the court must”.
- (9) Where a claim is for a debt or damages expressed in a currency other than sterling, and the court thinks that interest on the debt or damages should not run in accordance with subsection (4)—
 - (a) interest on the debt or damages runs at the rate specified by the court, and
 - (b) whether the interest is to be simple interest or compound interest is to be determined by the court.
- (10) In determining whether the amount of any debt or damages exceeds that specified in an enactment, no account is to be taken of interest payable by virtue of this section unless the enactment makes express provision to the contrary.

11 Interest on judgment debts

- (1) This section applies in relation to a sum (a “judgment debt”) which—

- (a) is payable under a judgment or order enforceable by the High Court or a county court (including a sum payable by instalments), or
 - (b) is, by virtue of an enactment, recoverable as if it were payable under a judgment or order of the High Court or a county court (including a sum which is so recoverable because the court so orders).
- (2) Subsection (1) is subject to provision made by an order under section 12 which specifies cases in which this section does not apply.
- 3) Interest on a judgment debt runs at the rate specified in, or determined in accordance with, an order under section 12(1)(b)(ii) (but this is subject to subsection (6)).
- (4) Whether interest under this section is to be simple interest or compound interest is to be determined in accordance with an order made under section 12.
- (5) The relevant court may—
 - (a) order that interest is to run only on a specified part of a judgment debt;
 - (b) disallow or vary the whole or part of the interest accruing by virtue of this section.
- (6) Where a judgment debt is expressed in a currency other than sterling, and the relevant court thinks that interest on the debt should not run in accordance with subsection (3)—
 - (a) interest on the debt runs at the rate specified by the court, and
 - (b) whether interest is to be simple interest or compound interest is to be determined by the court.
- (7) “Relevant court” means—
 - (a) in the case of a judgment debt within subsection (1)(a), the court giving the judgment or order that gives rise to the judgment debt;
 - (b) in the case of a judgment debt within subsection (1)(b), the court whose judgment or order the sum is treated as being payable under.

12. Rate of interest on debts and damages

- (1) The Lord Chancellor may by order—
 - (a) specify cases to which section 11 does not apply;
 - (b) specify or set out how to determine— (i) the rate at which interest awarded under section 10 is to run; (ii) the rate at which interest on a judgment debt (as defined by section 11) is to run.
- (2) An order under this section—
 - (a) may make provision which applies generally or only for specified cases or which applies subject to specified exceptions;
 - (b) may make different provision for different cases;
 - (c) may make supplementary, incidental, consequential, transitory, transitional or saving provision.

(3) An order under this section which specifies or sets out how to determine a rate of interest must specify whether the interest to which the order relates is to be simple interest or compound interest.

(4) Subsection (1)(a) does not affect the generality of subsection (2).

13 Awards of interest by other courts of record

(1) Section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 (power of courts of record to award interest on debts and damages) ceases to have effect.

(2) A court to which that section applied immediately before the commencement of this section is to have such powers in relation to the award of interest on debts and damages as are conferred on the High Court and county courts by section 10.

14 Repeal of existing powers to award interest

The following provisions cease to have effect—

(a) section 17 of the Judgments Act 1838 (judgment debts to carry interest);

(b) section 44 of the Administration of Justice Act 1970 (power to specify rate of interest on judgment debts) and section 44A of that Act (interest on judgment debts expressed in currencies other than sterling);

(c) section 35A of the Senior Courts Act 1981 (power of High Court to award interest on debts and damages);

(d) section 69 of the County Courts Act 1984 (power of county courts to award interest on debts and damages) and section 74 (power to specify rate of interest on judgment debts etc) of that Act.