

Draft Fatal Accidents Act 1976 (Remedial) Order 2020: Second Report

May 2020

On 18 May 2020, the commons Human Rights Committee published their second report on the reforms proposed to bereavement damages available in the UK.

The Fatal Accidents Act 1976, makes provision in cases of deaths occurring before 1 May 2020 for a fixed, one-off payment of £12,980 to be paid to bereaved spouses or civil partners, or in cases involving the death of a child, the parents of a "legitimate" child and mother only of an "illegitimate" child. The award for bereavement was increased to £15,120 for cases relating to deaths on or after 1 May 2020, following the Damages for Bereavement (Variation of Sum) (England and Wales) Order 2020, published on 16 March 2020.

The response to the proposed changes to the category of eligible claimants is mixed. Notably, the members welcome recommended changes to allow cohabittees, who were previously not entitled to claim bereavement damages, to make a claim, subject to having cohabitated with the deceased person for a period of at least two years immediately prior to their death. However, the report notes that this continues to exclude some cohabittees, notably those who have lived together for less than two years.

The report details significant criticism of the proposed changes in several further regards, with the Committee concluding that there are still numerous other caveats that could unfairly deny bereaved people compensation.

The report notes the Committee's disappointment that the use of the phrase "illegitimate children" remains. They state that this perpetuates the discrimination against cohabiting fathers who would not be eligible and that this omission in the proposed amendments does not accurately represent modern family life. The report also highlights concerns that the use of such language serves to stigmatise "illegitimate" children.

Further, there has been significant criticism of the failure to increase further the amount of the payment awarded, with many commentators stating that this is too low to accurately reflect the value of a lost life. Comparisons have been made with the laws in place in Scotland, where claimants receive damages on a case-by-case basis. In Scotland, there is no statutory limit and figures of up to £140,000 have been awarded. At present, the disparity between Scotland and the other UK countries leads to a "postcode" lottery of what damages may be awarded. The Committee had recommended a review of the bereavement damages scheme, but the Government rejected this.

The Committee has reiterated its plea to the Government to undertake consultation on wider reforms to the scheme. It remains to be seen whether further reports and guidance will be produced in due course.

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