EXPLANATORY MEMORANDUM TO

THE DAMAGES FOR BEREAVEMENT (VARIATION OF SUM) (ENGLAND AND WALES) ORDER 2007
2007 No.3489

THE DAMAGES FOR BEREAVEMENT (VARIATION OF SUM) (NORTHERN IRELAND) ORDER 2007
2007 No.3488

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

2. Description

2.1. These instruments increase the level of the award of bereavement damages in civil proceedings in England and Wales under the Fatal Accidents Act 1976 and in Northern Ireland under the Fatal Accidents (Northern Ireland) Order 1977 from £10,000 to £11,800 in respect of causes of action which arise on or after 1 January 2008.

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

3.1 None.

4. Legislative Background

4.1. In the consultation paper "The Law on Damages" published by the Department for Constitutional Affairs on 4 May 2007 http://www.justice.gov.uk/publications/cp0907.htm the Government announced its intention (at para 60) to increase the award of bereavement damages on a regular basis in line with the Retail Prices Index (rounded to the nearest £100), and that the first such increase would be made later in the year. It also indicated that subsequent adjustments would be made every three years thereafter. The appropriate rounded figure to reflect changes in the Retail Prices Index since 1 April 2002 is £11,800.

5. Extent

5.1. These two instruments apply to England and Wales and to Northern Ireland respectively.

6. European Convention on Human Rights

6.1. As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1. The Fatal Accidents Act 1976 and the Fatal Accidents (Northern Ireland) Order 1977 contain provisions in relation to actions for damages where death has been caused as a result of another person's wrongful act, neglect or default. Among other things, the legislation provides for a fixed award of bereavement damages, and gives a power to the Lord Chancellor to vary the level of this award. Bereavement damages 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 £7500 to £10,000 in respect of causes of action which arise on or after 1 April 2002. The previous increase took place in 1991.

7.2. In announcing its intention to increase the award every three years in line with inflation, the Government stated that this would ensure that the award is increased appropriately on a more regular and consistent basis and would assist insurers and the NHS in building the effect of future increases into their reserves and financial plans.

7.3. The change made in 2002 was reflected in Northern Ireland, and at present the level of bereavement damages there is the same as that in England and Wales. The relevant statutory instrument therefore maintains this position.

8. Impact

8.1. As these statutory instruments only increase the level of bereavement damages to reflect inflation, in accordance with Better Regulation Executive guidance an Impact Assessment has not been prepared.

9. Contact

9.1. Any enquiries about the contents of this memorandum should be addressed to: Anthony Jeeves, Personal Injury and Compensation Branch, Ministry of Justice, 3rd Floor, Selborne House, 54-60 Victoria Street, London SW1E 6QW.
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