EXPLANATORY MEMORANDUM TO

THE DAMAGES FOR BEREAVEMENT (VARIATION OF SUM) (ENGLAND AND WALES) ORDER 2020

2020 No. 316

1. Introduction

1.1 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 from £12,980 to £15,120 in respect of causes of action which arise on or after 1 May 2020.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 Alex Chalk, Parliamentary Under Secretary of State at the Ministry of 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 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Fatal Accidents Act 1976 governs civil claims for damages where a death is caused by the wrongful act or omission of another person.

6.2 The bereavement damages award is prescribed by section 1A of the Act, which gives the Lord Chancellor the power to set the level of the award by Order. The award is payable where a person dies as a result of another person's negligent act or omission, and is currently available to the wife, husband or civil partner of the deceased person; and, where the deceased was a minor who was never married or had a civil partner, to

his or her parents, if he or she was legitimate; or to his or her mother, if illegitimate. A separate statutory instrument (The Fatal Accidents Act 1976 (Remedial) Order 2020, was laid before Parliament on 12 February 2020 under the remedial order procedure contained in section 10 of, and Schedule 2 to, the Human Rights Act 1998. This would extend eligibility to a claimant who lived together as wife, husband or civil partner of the deceased person for a period of at least two years immediately prior to the death.

7. Policy background

What is being done and why?

7.1 The level of the bereavement damages award is kept under review and has been increased periodically since its introduction in 1982 (through amendments to the 1976 Act in the Administration of Justice Act 1982). The last such increase took place in April 2013, previous increases having been made in line with retail prices index inflation in April 2002 and January 2008. The Government considers that a further adjustment for inflation is now appropriate.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Government does not intend to consolidate the legislation.

10. Consultation outcome

10.1 The Government has not conducted a separate consultation exercise as it would not be proportionate to do so for an increase purely to reflect inflation.

11. Guidance

11.1 The Government will not be publishing guidance on this amendment.

12. Impact

12.1 An Impact Assessment has not been prepared for this instrument because we have assessed the impact on the insurance industry and the public sector in meeting claims for bereavement damages as small and because the instrument only increases the level of the bereavement damages award in line with inflation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. Small businesses may be liable to pay bereavement damages in circumstances where they are responsible for a death as a result of a wrongful act or omission.

13.2 However, the level of the award and the number of those likely to be eligible mean that the financial impact on small businesses is likely to be very small.

14. Monitoring & review

14.1 The Government keeps the level of bereavement damages under review and the award has been increased periodically since its introduction in 1982.

15. Contact

15.1 Anthony Jeeves at the Ministry of Justice, Telephone: 07580 927398 or email: Anthony.jeeves@justice.gov.uk, can be contacted with any queries regarding the instrument.

15.2 David Parkin, Deputy Director for Civil Justice and Law, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Alex Chalk at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.