EXPLANATORY MEMORANDUM TO

The Damages for Bereavement (Variation of Sum) Order (Northern Ireland) 2019

S.R. 2019 No. 80

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Article 3A(5) of the Fatal Accidents (Northern Ireland) Order 1977 and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the Statutory Rule is to increase the level of the bereavement award in line with inflation as measured by CPI, rounded to the nearest £100. Based on the CPI for February 2019, this brings it to £15,100 for causes of action arising on or after 1 May 2019.

3. Background

3.1. When a person dies as the result of an accident, their common law right of action against the negligent person dies with them. However, under the Fatal Accidents (Northern Ireland) Order 1977 ("the 1977 Order"), where a death has been caused by another person's negligence, there is a statutory right for the deceased person's dependants to claim for damages, for example, for the deceased person's loss of earnings. A limited category of people may also claim for a fixed award of damages for bereavement. If the claim for negligence is successful, the damages are paid by the defendant. The bereavement award is a token payment in acknowledgement of the grief caused by the deceased's death. It is not intended to reflect the value of the deceased's life or to punish the defendant.

3.2. The availability of bereavement damages is a matter for the Department of Finance as it is responsible for the substantive law on damages. The Department of Justice is responsible for setting, by negative resolution order, the fixed amount of bereavement damages under the 1977 Order.

3.3. The amount was previously set at £14,200 for causes of action arising from April 2016 and at that time, the then Minister of Justice gave a commitment that the amount would be adjusted in line with inflation every three years.

4. Consultation

4.1. None as the Statutory Rule just makes an inflationary uplift and the Department had conducted a consultation on a review of the level of bereavement damages prior to the 2016 increase.

5. Equality Impact

5.1. The Department has carried out an equality screening exercise on the proposed amendment. No adverse impacts for any of the nine categories in section 75 of the Northern Ireland Act 1998 were identified. A full Equality Impact Assessment was, therefore, not required.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment is not considered necessary.

7. Financial Implications

7.1. The Statutory Rule will increase, to reflect inflation, bereavement damages to be paid by defendants in circumstances where they are found liable in negligence for causing a person's death.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Statutory Rule complies with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. England and Wales has a similar statutory regime to that under the 1977 Order and the level of bereavement damages is set at £12,980 for causes of action accruing on or after 1 April 2013. A different statutory regime applies in Scotland where bereavement damages are not fixed: each case is decided on an individual basis.

11. Additional Information

11.1. Not applicable.