



Ministry of  
**JUSTICE**

# **Civil Law Reform**

A Draft Bill

December 2009



# **Civil Law Reform**

## **A Draft Bill**

Presented to Parliament  
by the Lord Chancellor and Secretary of State for Justice  
by Command of Her Majesty

December 2009

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## Foreword

The civil law affects us all in many different ways every day of our lives and continues to affect our property even after we are dead. It is important that it is kept up to date and that it is as simple and fair as possible. As part of this process and as promised in the Draft Legislative Programme I am delighted to lay before Parliament the draft Civil Law Reform Bill for pre-legislative scrutiny.

If enacted, the draft Bill would:

- reform the law of damages to provide a fairer and more modern system, particularly in relation to bereavement and dependency damages under the Fatal Accidents Act 1976.
- give greater flexibility in setting the interest rate on pre-judgment debt and damages and on judgment debts so that it can be adapted more readily to different circumstances, making it fairer to debtors and creditors alike.
- reform the law relating to the distribution of estates of a deceased person where an inheritance is forfeited or disclaimed, so that where a person is disqualified or refuses an inheritance, his or her heirs are not disinherited.
- bring the disciplinary hearing appeal process for barristers into line with the appeal process for solicitors by transferring the jurisdiction to hear appeals to the High Court.

Each of these reforms is independent from the others. Indeed, the damages reforms contain elements that are independent of each other.

Several of the reforms proposed derive from or implement recommendations of the Law Commission. I am very grateful to the Law Commission for its work in keeping the civil law up to date and will continue to work with it to modernise and simplify the law of England and Wales.

To ensure that the proposals have the widest possible circulation the Ministry of Justice is today publishing a consultation paper containing the draft Bill, explanatory notes and impact assessments for each of the main elements of the reforms.



Bridget Prentice MP

Parliamentary Under Secretary of State

Ministry of Justice

## Introduction

This paper sets out the text of the draft Civil Law Reform Bill and explanatory notes prepared by the Ministry of Justice to accompany it. The Bill is being published to enable it to be scrutinised in draft by Parliament. No date has been set for the introduction of the Bill into Parliament.

## Content of the Bill

The main elements of the draft Bill are:

- To reform the law of damages to provide a fairer and more modern system – in particular in relation to damages under the Fatal Accidents Act 1976.
- To reform of the law relating to how pre- and post-judgment interest is calculated on claims for debt and damages. This will give greater flexibility in setting the interest rate so that it can be adapted more readily to different circumstances.
- To reform the law relating to the distribution of estates of a deceased person where an inheritance is forfeited or disclaimed. This amends the law of succession so that where a person is disqualified or refuses an inheritance, his or her heirs are not disinherited.
- To bring the appeal process for barristers into line with the appeal process for solicitors in disciplinary hearings. This transfers the jurisdiction for appeals in barristers' disciplinary hearings from the Visitors of the Inns of Court to the High Court.

## Consultation paper

The draft Bill and the explanatory notes are also being published in a consultation paper to enable experts, stakeholders and the wider public to comment on the proposals. The consultation paper contains impact assessments for each of the principal parts of the draft Bill. On the basis of these assessments the reforms proposed should bring real if relatively modest benefits to those affected by the reforms.

The consultation paper is available free of charge at: [www.justice.gov.uk](http://www.justice.gov.uk)  
To facilitate pre-legislative scrutiny by the Justice Select Committee the consultation period will close on 9 February 2010.

## Territorial Application and devolution

The majority of the provisions in the draft Bill relate only to the law of England and Wales, but none affect the functions of the National Assembly for Wales. However, the Bill amends provisions of three statutes that affect the law of damages in England and Wales, Scotland and Northern Ireland: namely, section 13(2) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951; paragraph 12(4) of Schedule A1 to the Patents Act 1977 and

section 97(2) of the Copyright, Designs and Patents Act 1988 (see clause 9 of the draft Bill). In these respects the provisions in the Bill have the same scope as the legislation being amended and therefore apply to the whole of the United Kingdom. These proposed amendments will as a result make minor changes to the law of Northern Ireland on non-reserved matters, and to Scots law. As regards Scots law, the proposed amendments are treated as relating to reserved matters on the basis that they make modifications of Scots private law as it applies to reserved matters. Whilst civil remedies are generally devolved in Scotland, it would not be within the competence of the Scottish Parliament to make the proposed amendments to the specified enactments (all of which relate to reserved matters). A similar analysis applies to the law of Northern Ireland. No legislative consent motions are, therefore, expected to be required. The Patents Act 1977 also extends to the Isle of Man. Whether the new provision should extend to the Isle of Man will be the subject of consultation with the Isle of Man authorities. No decision has been taken at this stage.

### **Human Rights Act 1998 implications**

The proposed legislation is believed to be compatible with the European Convention on Human Rights.

### **Background**

Some of the reforms proposed are derived from or implement recommendations of the Law Commission. The relevant documents are listed below:

#### *Damages*

Law Commission Report: Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits (LC262)

[www.lawcom.gov.uk/docs/lc262\(1\).pdf](http://www.lawcom.gov.uk/docs/lc262(1).pdf)

Law Commission Report: Claims for Wrongful Death (LC 263)

(internet link not available)

Law Commission Consultation Paper: Damages for Personal Injury: Medical, Nursing and Other Expenses (LCCP 144)

[www.lawcom.gov.uk/docs/cp144.pdf](http://www.lawcom.gov.uk/docs/cp144.pdf)

Law Commission Consultation Paper: Claims for Wrongful Death (LCCP148)

[www.lawcom.gov.uk/closed\\_consultations.htm](http://www.lawcom.gov.uk/closed_consultations.htm)

Department for Constitutional Affairs Consultation Paper: The Law of Damages (CP 9/07)

[www.justice.gov.uk/consultations/docs/cp0907.pdf](http://www.justice.gov.uk/consultations/docs/cp0907.pdf)

Ministry of Justice Response Paper: The Law of Damages (CP(R) 9/07)

[www.justice.gov.uk/consultations/docs/law-damages-response.pdf](http://www.justice.gov.uk/consultations/docs/law-damages-response.pdf)

*Interest on judgment debts and damages*

Law Commission Report: Pre-Judgment Interest on Debt and Damages (LC287)

[www.lawcom.gov.uk/docs/lc287\(1\).pdf](http://www.lawcom.gov.uk/docs/lc287(1).pdf)

Law Commission Consultation Paper: Compound Interest: A consultation Paper (LCCP167)

[www.lawcom.gov.uk/docs/cp167.pdf](http://www.lawcom.gov.uk/docs/cp167.pdf)

Ministry of Justice Response Paper: Judgment Interest on Debt and Damages (16 September 2008)

[www.justice.gov.uk/publications/docs/pre-judgment-interest.pdf](http://www.justice.gov.uk/publications/docs/pre-judgment-interest.pdf)

*Distribution of estates*

Law Commission Report: The Forfeiture Rule and the Law of Succession (LC295)

[www.lawcom.gov.uk/docs/lc295\\_Final.pdf](http://www.lawcom.gov.uk/docs/lc295_Final.pdf)

Law Commission Consultation Paper: The Forfeiture Rule and the Law of Succession (LCCP172)

[www.lawcom.gov.uk/closed\\_consultations.htm](http://www.lawcom.gov.uk/closed_consultations.htm)

**Pre-legislative scrutiny**

The Bill will now be subject to pre-legislative scrutiny by the Justice Committee. The Justice Committee can be contacted at:

Justice Committee  
Committee Office  
House of Commons  
7 Millbank  
London SW1P 3JA

Tel 020 7219 8196 or 020 7219 8198

Fax 020 7219 0843

Or by e-mail [justicecom@parliament.uk](mailto:justicecom@parliament.uk)

**Enquiries**

General enquiries about the Bill and requests for copies of the consultation paper may be addressed to:

Civil Law Team  
Ministry of Justice  
4.15, 102 Petty France  
London SW1H 9AJ

Tel 020 3334 3212

Fax 020 3334 4035

Or by e-mail to [civillawreform@justice.gsi.gov.uk](mailto:civillawreform@justice.gsi.gov.uk)

# Civil Law Reform Bill

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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;”.

*Damages for gratuitous care***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.

**PART 3**

## DISTRIBUTION OF ESTATES

**15 Disclaimer or forfeiture on intestacy**

(1) Part 4 of the Administration of Estates Act 1925 (distribution of residuary estate) is amended as follows.

(2) After section 46 (succession on intestacy) insert –

**“46A Disclaimer or forfeiture on intestacy**

- (1) This section applies where a person –
- (a) is entitled in accordance with section 46 to an interest in the residuary estate of an intestate but disclaims it, or
  - (b) would have been so entitled had the person not been precluded by the forfeiture rule from acquiring it.

(2) The person is to be treated for the purposes of this Part as having died immediately before the intestate.

(3) But in a case within subsection (1)(b), subsection (2) does not affect the power conferred by section 2 of the Forfeiture Act 1982 (power of court to modify effect of forfeiture rule).

(4) In this section and section 46B, “forfeiture rule” has the same meaning as in that Act.”

(3) After section 46A insert –

**“46B Safeguarding infant’s share following forfeiture**

- (1) This section applies where –
- (a) a person (“the offender”) would have been entitled to an interest in the residuary estate of an intestate had the offender not been precluded by the forfeiture rule from acquiring it, and
  - (b) as a result of section 46A(2), an infant who is a child or remoter descendant of the offender becomes entitled to an interest in the estate.

(2) The Court, whether or not on its own initiative –

- (a) may appoint the Public Trustee, or such other person as the Public Trustee may recommend, to hold during the infant’s minority and on such trusts as the Court may specify any property to which the infant’s interest relates;
- (b) may make such further orders or give such directions as it thinks necessary or expedient for giving effect to the appointment.

(3) Before exercising a power under this section, the Court must consult the Public Trustee.

(4) Subsection (3) does not apply to the exercise of a power under subsection (2)(b) where the Court has appointed a person other than the Public Trustee under subsection (2)(a).

- (5) An appointment of the Public Trustee under subsection (2)(a) does not affect the application of section 2(3) of the Public Trustee Act 1906 (which allows the Public Trustee to decline to accept a trust).
  - (6) In deciding whether to exercise a power under this section, the Court must have regard to the need to ensure that the offender does not benefit as a result of the infant’s entitlement to an interest in the estate.
  - (7) A trustee appointed under this section must, so far as reasonably practicable, ensure that the offender does not (whether directly or indirectly) benefit from the trust.”
- (4) In section 47(1)(i) (provision that no issue with a parent alive at the intestate’s death may inherit), after “and so that” insert “(subject to section 46A)”.
  - (5) After section 47(4) insert –  
“(4A) Subsections (2) and (4) are subject to section 46A.”

## 16 Disclaimer or forfeiture of a gift under a will

- (1) The Wills Act 1837 is amended as follows.
- (2) After section 33 insert –

### “33A Disclaimer or forfeiture of gift

- (1) This section applies where a will contains a devise or bequest to a person who –
    - (a) disclaims it, or
    - (b) has been precluded by the forfeiture rule from acquiring it.
  - (2) The person is to be treated for the purposes of this Act as having died immediately before the testator.
  - (3) But in a case within subsection (1)(b), subsection (2) does not affect the power conferred by section 2 of the Forfeiture Act 1982 (power of court to modify effect of forfeiture rule).
  - (4) Subsection (2) is subject to any provision in the will about how the devise or bequest is to take effect in circumstances including those where the intended beneficiary comes within subsection (1)(a) or (b).
  - (5) In this section and section 33B, “forfeiture rule” has the same meaning as in the Forfeiture Act 1982.”
- (3) After section 33A insert –

### “33B Safeguarding infant’s share following forfeiture

- (1) This section applies where –
  - (a) a person (“the offender”) has been precluded by the forfeiture rule from acquiring an interest under a will, and
  - (b) as a result of section 33A(2), an infant who is a child or remoter descendant of the offender becomes entitled to an interest under the will.
- (2) The Court, whether or not on its own initiative –

- (a) may appoint the Public Trustee, or such other person as the Public Trustee may recommend, to hold during the infant's minority and on such trusts as the Court may specify any property to which the infant's interest relates;
  - (b) may make such further orders or give such directions as it thinks necessary or expedient for giving effect to the appointment.
- (3) Before exercising a power under this section, the Court must consult the Public Trustee.
  - (4) Subsection (3) does not apply to the exercise of a power under subsection (2)(b) where the Court has appointed a person other than the Public Trustee under subsection (2)(a).
  - (5) An appointment of the Public Trustee under subsection (2)(a) does not affect the application of section 2(3) of the Public Trustee Act 1906 (which allows the Public Trustee to decline to accept a trust).
  - (6) In deciding whether to exercise a power under this section, the Court must have regard to the need to ensure that the offender does not benefit as a result of the infant's entitlement to an interest under the will.
  - (7) A trustee appointed under this section must, so far as reasonably practicable, ensure that the offender does not (whether directly or indirectly) benefit from the trust.
  - (8) In this section, "the Court" has the same meaning as in the Administration of Estates Act 1925."
- (4) In section 33(3) (provision that no issue with a parent alive at the testator's death may inherit), after "and so that" insert "(subject to section 33A)".

## 17 Death of a single parent under 18

In section 47 of the Administration of Estates Act 1925 (the statutory trusts on intestacy) after subsection (4A) (inserted by section 15(5)) insert –

- “(4B) Subsections (4C) and (4D) apply if a beneficiary under the statutory trusts –
- (a) fails to attain an absolutely vested interest because the beneficiary dies without having reached 18 and without having married or formed a civil partnership, and
  - (b) dies leaving issue.
- (4C) The beneficiary is to be treated for the purposes of this Part as having died immediately before the intestate.
- (4D) The residuary estate (together with the income from it and any statutory accumulations of income from it) or so much of it as has not been paid or applied under a power affecting it is to devolve accordingly.”

## PART 4

### RIGHTS OF APPEAL

#### 18 Transfer of jurisdiction of Visitors to Inns of Court

- (1) Section 44 of the Senior Courts Act 1981 (extraordinary functions of High Court judges) ceases to have the effect of conferring jurisdiction on judges of the High Court sitting as Visitors to the Inns of Court.
- (2) The jurisdiction (as it existed immediately before the commencement of subsection (1)) is transferred to the High Court.
- (3) Accordingly an appeal against either of the following decisions lies only to the High Court—
  - (a) a disciplinary decision of the Council of the Inns of Court;
  - (b) a decision of the body responsible for the discharge of such regulatory functions of the General Council of the Bar as relate to qualifications.
- (4) The decision of the High Court on an appeal under this section is final.
- (5) Subsection (4) does not apply to a decision to disbar a barrister.

## PART 5

### GENERAL

#### 19 Power to make supplementary or other provision

- (1) The Lord Chancellor may by order make such supplementary, incidental, consequential, transitory, transitional or saving provision as the Lord Chancellor considers necessary or expedient for any of the purposes of this Act or for giving full effect to any provision of this Act.
- (2) An order under this section may, in particular—
  - (a) amend, repeal or revoke any enactment other than one contained in an Act or instrument passed or made after the Session in which this Act is passed;
  - (b) make different provision for different purposes.
- (3) Nothing in this section limits the power, by virtue of section 12(2), to include supplementary, incidental, consequential, transitory, transitional or saving provision in an order under that section.

#### 20 Orders: procedure

- (1) Orders under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing an order under section 12 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing an order under section 19 which amends or repeals any provision of an Act must not be made unless a draft of the instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.

**21 Interpretation**

In this Act –

“enactment” includes –

- (a) an Act or Measure of the National Assembly for Wales;
- (b) subordinate legislation;

“subordinate legislation” means –

- (a) subordinate legislation within the meaning of the Interpretation Act 1978, or
- (b) an instrument made under an Act or Measure of the National Assembly for Wales.

**22 Transitionals and repeals**

- (1) Schedule 1 (transitional and saving provision) has effect.
- (2) Schedule 2 (repeals) has effect.

**23 Commencement, extent and short title**

- (1) This Act (apart from this section) comes into force on such day as the Lord Chancellor may by order appoint; and different days may be appointed for different purposes.
- (2) An order under this section may include supplementary, incidental, consequential, transitory, transitional or saving provision.
- (3) An order under subsection (1) may not provide for Part 3 to come into force before the end of three months beginning with the date on which this Act is passed.
- (4) This Act extends to England and Wales only, subject as follows.
- (5) The amendments made by section 9 have the same extent as the provision to which they relate.
- (6) This Act may be cited as the Civil Law Reform Act 2010.

## SCHEDULES

### SCHEDULE 1

Section 22

#### TRANSITIONAL AND SAVING PROVISION

##### PART 1

##### DAMAGES

- 1 The amendments made by sections 1 to 6 and 8 apply to actions brought in respect of a death which occurs after the commencement of the amendment in question.
- 2 Section 7 applies where the cause of action for the claim arises after the commencement of that section.
- 3 The amendments made by section 9 apply to actions brought after the commencement of that section.

##### PART 2

##### INTEREST

- 4 Section 10 applies where the proceedings for the recovery of the debt or damages are commenced after the commencement of that section.
- 5 Section 11 applies –
  - (a) in the case of a judgment debt falling within section 11(1)(a), where the judgment is given, or the order is made, after the commencement of that section, and
  - (b) in the case of a judgment debt falling within section 11(1)(b), where the date on which the sum becomes recoverable as if payable under a judgment or order is after the commencement of that section.
- 6 The repeals of section 3 of the Law Reform (Miscellaneous Provisions) Act 1934, section 35A of the Senior Courts Act 1981 and section 69 of the County Courts Act 1984 do not affect any proceedings for the recovery of a debt or damages which are commenced before the commencement of section 10.
- 7 The repeals of section 17 of the Judgments Act 1838, sections 44 and 44A of the Administration of Justice Act 1970 and section 74 of the County Courts Act 1984 do not affect –
  - (a) sums payable by virtue of a judgment given or order made where that judgment is given or that order is made, before the commencement of section 11, or

- (b) sums which, by virtue of an enactment, are recoverable as if payable by virtue of a judgment or order where the sum becomes so recoverable before the commencement of section 11.

SCHEDULE 2

Section 22

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Judgments Act 1838 (c. 110)	Section 17.
Law Reform (Miscellaneous Provisions) Act 1934 (c. 41)	Section 3.
Administration of Justice Act 1970 (c. 31)	Section 44. Section 44A.
Fatal Accidents Act 1976 (c. 30)	Section 1A(2)(b)(i) and (ii). Section 3(4).
Senior Courts Act 1981 (c. 54)	Section 35A.
County Courts Act 1984 (c. 28)	Section 69. Section 74.

# CIVIL LAW REFORM BILL

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes relate to the Civil Law Reform Bill as published in draft on 15 December 2009. They have been provided by the Ministry of Justice in order to assist the reader of the draft Bill and to help inform debate on it. They do not form part of the draft Bill and have not been endorsed by Parliament. References to “the Bill” in these explanatory notes are to the draft Bill.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### OVERVIEW

3. The draft Civil Law Reform Bill will reform aspects of the law of damages, the law governing the award of pre- and post-judgment interest on claims for debt and damages; the law of succession and the law relating to rights of appeal in barristers’ disciplinary hearings. Some of the proposals implement recommendations of the Law Commission.
4. The Bill is divided into 5 Parts.

### TERRITORIAL EXTENT AND APPLICATION

5. Generally, the Bill extends to England and Wales only, but clause 9 contains amendments which have the same extent as the provisions they amend. The subject matter of this Bill is reserved to the United Kingdom Parliament in relation to Scotland and Northern Ireland. In relation to Wales the matter is not devolved. The Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating

to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them. With regard to Northern Ireland, the Bill does not contain any provisions that are specifically for a transferred purpose. A Legislative Consent Motion will not be necessary unless the Bill is amended to include matters that are devolved to Northern Ireland. The Bill does not contain provisions which fall within the legislative competence of the National Assembly for Wales and so a Legislative Consent Motion will not be necessary; neither does it affect the competence of the Welsh Ministers.

## COMMENTARY ON CLAUSES

### Clause 1: Extension of right of action

6. This clause extends the statutory list of dependants who are eligible to claim damages under section 1 of the Fatal Accidents Act 1976 (“the 1976 Act”). The provision includes any person who does not fall within the other categories of dependant but who was being maintained by the deceased immediately before the death.
7. *Subsection (3)* provides that a person is considered to be maintaining another person if, otherwise than for full valuable consideration, they make a substantial contribution in money or money’s worth towards the other person’s reasonable needs.

### Clause 2: Assessment of damages: effect of remarriage etc

8. This clause amends section 3 of the 1976 Act which sets out how a court is to assess the damages to be awarded to a dependant of the deceased.
9. *Subsection (2)* replaces the current subsection (3) of section 3 of the 1976 Act with a new subsection which provides that the court must take into account the fact that since the death the dependant has married or remarried; entered into a civil partnership; or entered into a relevant relationship.
10. *Subsection (3)* inserts two new subsections into section 3 of the 1976 Act. Subsection (3A) provides that the court when assessing the damages to be awarded to a child of the deceased may take into account the fact that since the death the surviving parent of the child has married or remarried; entered into a civil partnership; or entered into a relevant relationship. Subsection (3B) defines “relevant relationship” – it provides that a person has entered into a relevant relationship if, at the time when the action is brought, he or she lives with another person as

husband, wife or civil partner; has been doing so for at least two years; and is being maintained by the other person.

**Clause 3: Assessment of damages: possibility of relationship breakdown**

11. *Subsection (2)* inserts three further new subsections in section 3 of the 1976 Act. New subsection (3C) provides that in assessing damages to be awarded to a wife, husband or civil partner or former wife, husband or civil partner the court may, if subsection (3D) applies, take into account the prospect of the dependant's marriage or civil partnership to the deceased breaking down, had the deceased not died. New subsection (3D) provides that the court can only take the prospect of relationship breakdown into account where the dependant or the deceased had petitioned for divorce, judicial separation or nullity of marriage; applied for an order to dissolve or annul the civil partnership; or where, immediately before the date of the death, the dependant and the deceased were no longer living together.
12. New subsection (3E) provides that in assessing damages to be awarded to a person who is dependant by virtue of section 1(3)(b) of the 1976 Act (that is a person who has been in a cohabiting relationship of not less than two years duration with the deceased at the time of death), the prospect of the dependant ceasing to be in the relationship, had the deceased not died, may not be taken into account by the court. This is because there is no objective factor or formal steps which can be identified to signal the imminent breakdown of a cohabiting relationship, and on balance it is considered that opening up the consideration of the prospects of breakdown generally would be too intrusive.

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

13. This clause repeals subsection (4) of section 3 of the 1976 Act, which required the court to take into account, when assessing damages to be awarded to a cohabitant of the deceased of at least two years duration that the cohabitant had no enforceable right to financial support by the deceased as a result of their living together. This provision has been criticised for its lack of clarity and its intrusive nature.

**Clause 5: Damages for bereavement**

14. This clause extends the statutory list of people eligible to claim bereavement damages, by amending section 1A of the 1976 Act. It also makes provision regarding the amount of bereavement damages to be awarded in certain circumstances. Bereavement damages are currently

available to the wife, husband or civil partner of the deceased; and where the deceased was a minor who was never married or a civil partner, his or her parents, if he or she was legitimate; and his or her mother, if he or she was illegitimate.

15. *Subsection (2)* provides for two new categories of eligible claimant. These are any person who had been living with the deceased as the deceased's husband or wife or civil partner for a period of at least two years ending with the date of the death (new subsection (2)(aa)); and any child of the deceased, who was under the age of 18 at the time of the death (new subsection (2)(ab)).
16. In addition *subsection (3)* amends section 1A(2)(b) of the 1976 Act to make bereavement damages available to both parents of a child aged under 18, who was not married or a civil partner at the time of his or her death. This applies where the parents have parental responsibility for the child under the terms of the Children Act 1989 (see *subsection (7)* below). As noted above, bereavement damages are currently not available to an unmarried father who has parental responsibility.
17. *Subsections (4), (5) and (6)* make provision in relation to the amount of bereavement damages to be awarded. *Subsection (4)* provides that the full amount of bereavement damages (currently £11,800) is to be awarded to the wife, husband or civil partner; a cohabitant of the deceased of not less than two years duration at the date of the death; and the parents of a person aged under 18 at the time of the death, who was not married or a civil partner.
18. *Subsection (5)* provides that each person eligible under new subsection (2)(ab) (i.e. a child of the deceased under the age of 18) is entitled to be awarded half of the full amount of bereavement damages (subject to any deduction falling to be made in respect of costs not recovered from the defendant). This means that currently each eligible child would receive an award of £5900 (regardless of the number of eligible children in an individual case).
19. In the light of the new categories eligible to claim, it is possible in rare instances that a situation could arise where a wife, husband or civil partner had separated but not divorced or dissolved the civil partnership, and the deceased had entered into a new cohabiting relationship of over two years' duration. *Subsection (6)* provides that in these circumstances the full award is to be divided equally between them (subject to any deduction falling to be made in respect of costs not recovered from the defendant).

20. As noted above, *subsection (7)* provides that the references within section 1A of the 1976 Act to the deceased's parents are references to persons who, at the date of the death, had parental responsibility for the deceased within the meaning of the Children Act 1989.

**Clause 6: Minor amendment**

21. This clause replaces the existing subsection 1(3)(b) of the 1976 Act with a new subsection which states that 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 two years ending with the date of the death will fall within the definition of a dependant. This simplifies the wording but leaves the substance unchanged.

**Clause 7: Damages for gratuitous services**

22. Clause 7 contains provisions in relation to the award of damages for gratuitous care in personal injury cases.
23. *Subsections (1) and (2)* provide that if, in an action for personal injury, a court awards damages to the injured person in respect of a gratuitous provision of services to that person then the injured person must account to such persons as provided the services before the date of the award, and to such persons as provided the services on or after that date. This provision replaces the existing requirement under the common law for any such damages to be placed in trust for the carer.
24. *Subsection (3)* provides that 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. However, *subsection (4)* provides that a court may not award damages in respect of gratuitous provision of services by the defendant to the injured person for any period before the date of the award. This is because there would be little point in a defendant paying damages to the claimant which would immediately be returned to him or her. However, in the case of damages for future gratuitous care it is considered appropriate for the damages to be paid subject to the claimant being under a personal obligation to account for them as the care is provided.
25. *Subsection (5)* defines certain terms used in clause 7. It provides that personal injury includes any disease and any impairment of a person's physical or mental condition. It also defines references to providing services as including in particular, providing the injured person with personal care; and carrying out tasks as part of the running or maintaining of the injured person's home or supporting their domestic or family life. This subsection also clarifies that services are provided

gratuitously if the person making the provision does so without having any legally enforceable right to payment in respect of their provision.

**Clause 8: Awards of damages under the Fatal Accidents Act 1976**

26. This clause sets out provisions which reflect those in clause 7, as adapted for fatal accidents claims. It inserts a new clause 3A into the 1976 Act, subsections (1) and (2) of which provide that a court, when assessing an injury to a dependant under section 3(1) of the 1976 Act, may include the loss to a person of gratuitously provided services which the deceased would have provided but for the death. If the dependant does recover such damages then they must account to such persons as provided the services both before the date of the award and on or after that date.
27. Subsections (3) and (4) of the new section 3A provide that a court must not refuse to award damages for the loss to a person of gratuitously provided services which would have been provided by the deceased but for the death merely because the person providing the services is the defendant. However, the court may not award damages in respect of gratuitous provision of services by the defendant to the dependant for any period before the date of the award.
28. *Subsection (5)* confirms that the references to the dependant include references to the dependant's personal representatives. *Subsection (6)* provides that the references to gratuitously providing services are to be construed in accordance with clause 7 of this Bill.

**Clause 9: Power to award aggravated damages etc**

29. *Subsection (1)* amends section 13(2) of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ("the 1951 Act") to replace the provision for "exemplary" damages with a provision for "aggravated" damages. The 1951 Act extends to the whole of the United Kingdom and provides that various civil judgments cannot be enforced against members of the armed forces without the permission of the court. Under section 13(2) of the 1951 Act if someone acts without the court's permission and a claim is brought against them, the court may award exemplary damages. The scope in civil law to go beyond purely compensatory damages and to award "punitive" or "exemplary" damages is very limited. The purpose of the civil law on damages is to provide compensation for loss, and not to punish. The function of exemplary damages is more appropriate to the criminal law, and their availability in civil proceedings blurs the distinction between the civil and criminal law. The Bill therefore amends the only existing provision for exemplary damages in statute.

30. *Subsection (2)* amends paragraph 12(4) of Schedule A1 to the Patents Act 1977. This Act extends to the whole of the United Kingdom and the Isle of Man. It provides that the power to award damages for providing false information applies whether the action is brought by an individual or a body corporate. This is necessary because in *Collins Stewart Ltd and another v Financial Times Ltd* [2005] EWHC 262 (QB) the Court of Appeal decided that aggravated damages were in principle not available to a corporate claimant because a company has no feelings to injure and cannot suffer distress and many claimants under the Patents Act 1977 will be companies. Subsection (2) also replaces the expression “additional damages” with “aggravated damages and such amount by way of restitution”. The term “additional damages” appears in no statute other than Schedule A1 to the Patents Act 1977 and the Copyright, Designs and Patents Act 1988 (see below) and has been the subject of criticism for uncertainty. The Bill therefore clarifies the nature of these damages in line with current case law.
31. *Subsection (3)* makes equivalent amendments to those made by subsection (2) of the Bill to the Patents Act 1977 to section 97(2) of the Copyright, Designs and Patents Act 1988. This Act extends to the whole of the United Kingdom.

#### **Clause 10: Power to award interest on debts and damages**

32. This clause sets out the power of the High Court and the county court to award pre-judgment interest on claims for the recovery of a debt and damages. “Pre-judgment interest” is interest on the debt or damages from the day when the cause of action arose until judgment is entered or payment made (whichever is the earlier). The clause broadly replicates the courts’ existing powers in section 35 of the Senior Courts Act 1981 (“the 1981 Act”) and section 69 of the County Courts Act 1984 (“the 1984 Act”). The power to award interest is discretionary (*subsection (2)*), apart from in personal injury cases (see below). However, if the court decides to award interest, the court can only award it at the rate specified by the Lord Chancellor by order under clause 12(1)(b)(i) (*subsection (4)*). The order under clause 12 also specifies whether the interest is to be simple interest or compound interest. Interest may be awarded for the period from the accrual of the cause of action to the date of the judgment or the payment to the claimant as the case may be (*subsection (6)*).
33. The court retains the power to award interest on a debt even if the whole debt claimed has been paid (*subsection (3)*). This provision is necessary because where a debt is paid in full the cause of action is extinguished and there will be no judgment on the debt claimed.

34. There is, however, no power to award interest in respect of any sum on which interest may already be payable (*subsection (7)*). Interest may, for example, be payable under statute before court proceedings are started. This occurs under section 86(1) of the Taxes Management Act 1970 in relation to unpaid income or capital gains tax. Another example is the rate of interest payable under the Late Payment of Commercial Debts (Interest) Act 1998.
35. Notwithstanding the general discretionary nature of the court's power, the court must award interest in respect of claims over £200 in respect of personal injury or death, unless there are special reasons not to do so (*subsection (8)*).
36. *Subsection (9)* allows the court to substitute another rate of interest for cases where the claim is not expressed in sterling.
37. *Subsection (10)* provides that in deciding whether any debt or damages exceeds a statutory limit interest under clause 10 is to be disregarded unless the statute provides to the contrary.

#### **Clause 11: Interest on judgment debts**

38. This clause sets out when interest is to run on a judgment debt. For these purposes a judgment debt is defined in *subsection (1)*. This provision broadly replicates the effect of the existing legislation (see section 17 of the Judgments Act 1838 and section 74 of the County Courts Act 1984). In general, interest will accrue on the judgment debt but the court has a discretion to order that interest is only to run on part of the debt and may disallow or vary the whole of the interest payable (*subsection (5)*). This follows the terms of section 17(2) of the Judgments Act 1838, which applies to the High Court.
39. The rate of interest payable is the rate specified by the Lord Chancellor by order under clause 12(1)(b)(ii) (*subsection (3)*). The order under clause 12 also specifies whether the interest is to be simple interest or compound interest. *Subsection (6)* allows the court to specify a different rate if the judgment debt is not expressed in sterling.

#### **Clause 12: Rate of interest on debts and damages**

40. This clause enables the Lord Chancellor to specify cases to which clause 11 will not apply and to prescribe the rate of interest that will be payable under clauses 10 and 11 respectively (*subsection (1)*). In doing so the Lord Chancellor must specify whether the interest is to be simple or compound (*subsection (3)*).

41. *Subsection (2)* provides that an order specifying a rate of interest may make general provision for all claims to which the relevant clause applies or just for specific cases. This will allow different rates of interest to be specified for different cases and for no interest rate to be specified for some cases.
42. The order is made by statutory instrument and is subject to the negative resolution procedure. In other words, it is subject to the possibility of annulment by a resolution of either House of Parliament (see clause 20).

### **Clause 13: Awards of interest by other courts of record**

43. This clause repeals section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 (*subsection (1)*) and makes new provision in *subsection (2)*. Section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 applies to courts of record (other than the High Court and county courts), for example, the Barmote Courts (which have jurisdiction to deal with some mining disputes in Derbyshire) and the Court of Admiralty of the Cinque Ports (which has jurisdiction to deal with some salvage claims). These courts, pursuant to section 3, have a separate power to award interest on debts and damages. *Subsection (2)* provides that these other courts of record are to have the same powers to award interest on debts and damages as the High Court and the county courts.

### **Clause 14: Repeal of existing powers to award interest**

44. This clause lists the provisions repealed as a consequence of the introduction of the new provisions in clauses 10 to 12. These provisions are however saved for proceedings to which clause 10 applies that were begun before that clause is brought into effect (*Part 2 of Schedule 1, paragraph 6*) and to which clause 11 applies where the judgment was given or order made before that clause is brought into force (*Part 2 of Schedule 1, paragraph 7*).

### **Clause 15: Disclaimer or forfeiture on intestacy**

45. This clause inserts two new sections into the Administration of Estates Act 1925 (“the 1925 Act”), and makes two consequential amendments to section 47 of that Act. These provisions are intended to address the situation that arose in *Re DWS (deceased)* [2001] Ch 568 (CA). Briefly, the facts were that a person (P) killed both his parents, neither of whom left a will. The court had to decide who was entitled to inherit P’s father’s estate. P was not allowed to inherit because of the common law forfeiture rule, which prevents persons guilty of unlawful killing

from inheriting from their victims. However, P's child, the grandchild of the P's victims, could not inherit in place of P under the intestacy rules in sections 46 and 47 of the Administration of Estates Act 1925 because P was still alive. Instead, the victim's estate passed to one of P's siblings.

46. *Subsection (2)* inserts new section 46A into the 1925 Act.
47. Subsection (1) of the new section 46A specifies that the new section applies where a person disclaims (rejects) an inheritance or is disqualified from inheriting from another because he or she has unlawfully killed that person and has been convicted of their killing (the effect of the common law "forfeiture rule").
48. Subsection (2) of the new section 46A provides that, in all such situations, the property should be treated for succession purposes in the same way as if the person disclaiming or forfeiting the inheritance had died immediately before the intestate. This overcomes the requirement in the present law of intestacy that children cannot inherit if their parents are still alive (see Administration of Estates Act 1925, s 47(1)(i)). The effect of the reform is that where a person disclaims or is disqualified under the forfeiture rule from inheriting, the inheritance to which he or she is no longer entitled will go to the next person listed in order of priority in section 46 of the Administration of Estates Act 1925. This is so even though the person who disclaimed or suffered the forfeiture is still alive.
49. Subsection (2) of the new section 46A provides that, in all such situations, the property should be treated for succession purposes in the same way as if the person disclaiming or forfeiting the inheritance had died immediately before the intestate. This overcomes the requirement in the present law of intestacy that children cannot inherit if their parents are still alive (see Administration of Estates Act 1925, s 47(1)). The effect of the reform is that a person disclaims or is disqualified under the forfeiture rule the inheritance to which he or she is no longer entitled will go to the next person listed in order of priority in section 46 of the 1925 Act, even though the person who disclaimed or suffered the forfeiture is still alive.
50. *Subsection (3)* inserts new section 46B into the 1925 Act. It safeguards an infant's share following forfeiture by ensuring that the disqualified person does not directly or indirectly benefit from the inheritance. The rule introduced by new section 46A allows a person's children and other descendants to inherit in place of that person, when he or she is disqualified by the forfeiture rule. If these children are minors, the inheritance takes the form of "statutory trusts", which are defined in the

existing section 47 of the 1925 Act. Section 47 provides that any child or descendant of the deceased acquires a vested interest on attaining the age of eighteen or marrying or forming a civil partnership under that age. Until then the property is held on trust, with the usual powers of maintenance, advancement and accumulation.

51. Subsection (2) of the new section 46B provides the court with a discretionary power to appoint the Public Trustee, or such other person as the Public Trustee may recommend, to hold the property for the minor beneficiary. The purpose of this discretionary power is to avoid the killer from benefiting from the infant's share of the inheritance.
52. Subsection (3) of the new section 46B provides that before exercising its power under section 46B, the court must consult the Public Trustee. This provides flexibility as there may be circumstances where the role of trustee could be adequately dealt with by a trustee in the private sector. This also reflects the policy that the Public Trustee should be a trustee of last resort. The Public Trustee need not be consulted regarding orders and directions made when he or she is not the trustee appointed by the court (new section 46B(4))
53. Subsection (7) of the new section 46B provides that the appointed trustee must so far as reasonably practicable administer the trust so as to avoid any benefit going to the killer. The appointed trustee continues to hold the property until the beneficiary attains the age of eighteen. There is no specific provision for the trust to terminate if the beneficiary marries or forms a civil partnership before that age.
54. *Subsection (4)* makes a consequential amendment. At present, section 47(1) of the 1925 Act, which defines the statutory trusts for descendants, provides that no grandchild or remoter descendant may inherit if his or her parent was still alive when the intestate died. The effect of section 46A is to treat the offender as having died before the deceased, so as to allow the offender's descendants to inherit. Subsection (4) inserts the words "subject to section 46A" into section 47(1), to ensure consistency with the new rule.
55. *Subsection (5)* is another consequential provision, and inserts a new subsection after section 47(4) of the 1925 Act, stating that subsections (2) and (4) of section 47 are subject to the new section 46A. Section 47(2) provides that, where no descendant of the intestate attains a vested interest, the estate is to be distributed as if the intestate had died without issue. Section 47(4) applies a similar rule to the statutory trusts for siblings or issue of siblings, which are defined by section 47(3).

**Clause 16: Disclaimer or forfeiture of a gift under a will**

56. This clause inserts two new sections after section 33 of the Wills Act 1837 (the 1837 Act), and makes one consequential amendment to that section.
57. *Subsection (2)* inserts a new section 33A into the 1837 Act. It corresponds to the new section 46A set out in clause 15(2).
58. Subsection (1) of the new section 33A specifies that the new section applies where a person either disclaims a gift under a will or is precluded from taking it by the forfeiture rule because he or she has killed the testator.
59. Subsection (2) of the new section 33A provides that in both these situations, the will is to be interpreted as if the person disclaiming or forfeiting had died immediately before the testator. The effect of this is that the persons next entitled to the property will be able to inherit.
60. Subsection (3) of the new section 33A provides that, as in the intestacy situation, the new rule gives way to any order the court may make under section 2 of the Forfeiture Act 1982 to give relief to the killer from the effect of the forfeiture rule.
61. Subsection (4) of the new section 33A provides that the new rule gives way to any specific provision in the will about what happens to the gift in circumstances of forfeiture or disclaimer. This ensures the express wishes of the testator take priority.
62. *Subsection (3)* inserts a new section 33B into the 1837 Act. It corresponds to the new section 46B set out in clause 15(3). It safeguards an infant's share following forfeiture by ensuring that the disqualified person does not directly or indirectly benefit from the inheritance. The rule introduced by the new section 33A allows a person's children and other descendants to inherit in place of that person, where he or she is disqualified by the forfeiture rule. This may result in the forfeited property being held on trust for the children. This may happen if the will contains a default gift or if the special provision in section 33(1) of the 1837 Act applies. Section 33(1) of the 1837 Act provides that where a person makes a will in favour of his or her child and the child dies before the parent, the deceased child's children or remoter issue, if they exist, will take that share.
63. Subsection (2) of the new section 33B provides the court with a discretionary power to appoint the Public Trustee, or such other person

as the Public Trustee may recommend, to hold the property for the minor beneficiary. The purpose of this discretionary power is to avoid the killer from benefiting from the infant's share of the inheritance.

64. Subsection (3) of the new section 33B provides that before exercising its power under section 33B, the court must consult the Public Trustee. This provides flexibility as there may be circumstances where the role of trustee could be adequately dealt with by a trustee other than the Public Trustee. This reflects the policy that the Public Trustee should be a trustee of last resort. It also ensures that if the Public Trustee is appointed he or she is engaged in all decisions made by the court before they are made. The Public Trustee need not be consulted regarding orders and directions made when he or she is not the trustee appointed by the court (new section 33B(4)).
65. Subsection (7) of the new section 33B provides that the appointed trustee must so far as reasonably practicable administer the trust so as to avoid any benefit going to the killer.
66. Subsection (4) is a consequential provision. It amends section 33(3) of the 1837 Act and corresponds to subsection (4) of clause 15 in the intestacy situation. Section 33(3) excludes a grandchild or remoter descendant of the testator whose parent was still alive at the testator's death from inheriting. *Subsection (4)* avoids inconsistency with the rule introduced by section 33A.

#### **Clause 17: Death of a single parent under 18**

67. This clause inserts new subsections (4B), (4C) and (4D) after the new section 47(4A) of the 1925 Act. The inserted subsections address a situation, in which a child of an intestate dies under the age of eighteen without having married or formed a civil partnership, and leaves children. Under the present law where a person (D) dies intestate leaving minor children, the property that is to pass to the children from D's estate is held on the statutory trusts set out in section 47 of the Administration of Estates Act 1925. These trusts provide that the children attain an absolutely vested interest (that is, become fully entitled to inherit) in the trust property on reaching the age of eighteen or on marrying or forming a civil partnership before reaching that age. However, a child cannot inherit if their parent is alive at the death of the intestate and so capable of taking the inheritance. Therefore, if a child (A) attains an absolutely vested interest and then dies, A's children will be able to inherit in A's place. However, if A dies before attaining an absolutely vested interest, then A's children will not inherit. They cannot inherit directly from D, because A was still alive at D's death and they cannot inherit via A, because A never attained a vested interest

in D's estate. A's potential share in the trust property passes instead to D's other relatives as set out in the statutory rules. In this situation, the inserted subsections provide instead that where A dies without attaining an absolutely vested interest, A's potential interest in D's estate is to be distributed as if A had died immediately before D. Income from the estate is dealt with in the same way. This overcomes both the problems in the present law and A's children will then be able to inherit if and when they attain an absolutely vested interest in their own right. In this example, D is the grandparent of A's children but the same problem can arise where the person (A) who dies under the age of 18 is a grandchild, sibling, uncle or aunt of the intestate (D), or a descendant of any of these. The new subsections also address these situations.

#### **Clause 18: Transfer of jurisdiction of Visitors to Inns of Court**

68. This clause transfers the jurisdiction of the Visitors to the Inns of Court to the High Court. The effect is that a right of appeal from the following decisions will lie to the High Court:

(a) decisions made in barristers disciplinary cases;

(b) decisions not to allow waivers from the standard requirements for qualification and/or practising;

(c) decisions to refuse a barrister permission to act as a pupil master.

69. This is achieved by disapplying section 44 of the Senior Courts Act 1981 so that it no longer confers jurisdiction on Court of Appeal and High Court judges to sit as Visitors to the Inns of Court (*subsection (1)*) and by transferring jurisdiction to the High Court (*subsection (2)*). Appeals from disciplinary decisions of the Council of the Inns of Court and from decisions of the body responsible for regulatory functions of the General Council of the Bar (as they relate to qualifications) lie to the High Court (*subsection (3)*), from which there is no appeal, except in relation to a decision to disbar a barrister (*subsection (4)*).

#### **Clause 19: Power to make supplementary or other provision**

70. This clause gives power to the Lord Chancellor by order to make such additional provision to give full effect to the Bill as he considers expedient or necessary (*subsection (1)*). The order may amend, repeal or revoke legislation existing at the end of the session of Parliament in which the Bill is enacted.

**Clause 20: Orders: procedure**

71. This clause specifies the Parliamentary procedure to be followed in making orders under the Bill. Orders under clause 12 are subject to a negative resolution procedure and those under clause 19 are under an affirmative resolution procedure.

**Clause 21: Interpretation**

72. This clause defines terms used in the Bill.

**Clause 22 and Schedule 1: Transitional and saving provision**

73. *Subsection (1)* of this clause gives effect to Schedule 1. Part 1 of Schedule 1 sets out transitional provisions for the clauses on damages. With the exception of clauses 7 and 9, Part 1 applies to actions brought in respect of deaths occurring after the clause is brought into force. Clauses 7 and 9 apply to actions brought after the date the relevant clause is brought into force.

74. The new provisions regarding pre-judgment interest in clause 10 will apply to proceedings begun after the clause comes into force (*Part 2 of Schedule 1, paragraph 4*). Clause 11 will apply to judgments made after the clause comes into force or, in relation to sums on which interest is otherwise payable, to such sums as become recoverable after that date (*Part 2 of Schedule 12, paragraph 5*).

**FINANCIAL EFFECTS OF THE BILL**

75. Implementation of the provisions of the Bill are not expected to impose any significant additional burden on the Consolidated Fund or the National Loans Fund or to increase significantly any other public expenditure. However, the reforms to the law of damages may lead to an increase in the overall cost of payments by public bodies as a result of claims for damages against them. The amount of this increase (if any) will depend on the number and nature of claims made. The reforms relating to the award of pre- and post-judgment interest, when specified in and put into effect by secondary legislation, may lead to more interest being payable by public bodies on debts and damages owed by them. The amount of this increase (if any) will depend on the rates of interest specified from time to time and the sums and times in respect of which that interest is payable.

## **EFFECTS OF THE BILL ON PUBLIC MANPOWER**

76. No significant change in the workload of any Government department or agency is anticipated on implementation of this Bill.

## **SUMMARY OF THE IMPACT ASSESSMENT**

77. An impact assessment has been prepared in relation to the damages provisions in the Bill, which estimates that the additional cost of the proposals is likely to be approximately £11.4m per annum. These costs will largely fall on insurers or their policyholders and, in the case of clinical negligence, the National Health Service Litigation Authority and medical defence organisations. Any costs in relation to insured businesses (including small firms) would be restricted to any increase in insurance premiums. There would be no impact on the third sector or the environment.
78. The main benefits identified are that it would ensure that all those actually dependant on the deceased person at the time of death could bring a fatal accidents claim, and that bereavement damages are available to those closest to the deceased. It is estimated that these claimants will benefit to the sum of about £11.4 million per annum.
79. An impact assessment has been prepared in relation to the interest provisions in Part 2 of the Bill. The provisions provide a legal framework and will not of themselves have an impact. However, when exercised the new power to specify interest rates could have significant effects. The exercise of the power will be preceded by further consultation and impact assessments.
80. An impact assessment of the distribution of estates provisions in Part 3 of the Bill has been prepared. They are not expected to have any effect other than to divert property on succession from one person to another, although, some persons may wish to make or amend wills to take account of the changes. The additional obligation on trustees of beneficiaries who are minors to ensure that the disinherited killer does not benefit is not expected to be onerous. The role of the Public Trustee if appointed is also not expected to be onerous.
81. An impact assessment of the right of appeal provisions in Part 4 of the Bill has been prepared. The reform is not expected to have a significant effect as it will apply only in a small number of cases.

## **COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

82. The provisions of the Bill engage various Convention rights, but is thought to be compatible with them all.

## **COMMENCEMENT**

83. The Bill will come into force on such day as the Secretary of State may specify by order (clause 23(1)). However, Part 3 cannot be brought into force within a period of three months commencing on the date of Royal Assent.





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