

CIVIL LAW REFORM BILL

DRAFT RESPONSE OF CIVIL SUB-COMMITTEE OF THE COUNCIL OF HER MAJESTY'S CIRCUIT JUDGES

1. Our general comment about the Bill is that the method of amending legislation by amending individual sections and subsections in an existing statute is cumbersome and inconvenient. It would ease the task of lawyers, judges and members of the public wishing to understand legislation if, where a previous Act is undergoing extensive amendment (as the Fatal Accidents Act 1976 is on this occasion) the previous Act were to be repealed in its entirety and replaced by a new Act incorporating the amendment.
2. Alternatively, a simpler and less expensive alternative would be to reproduce in full any section of an Act which is amended in a schedule to the amending legislation with all amendments accurately incorporated.

Damages: Questions 1-3

3. We suggest that section 3 subsection (1) and subsection (2) up to and including the word "insert-" are redundant and that subsection (3) of section 2 should continue after (3B) with (3C), (3D) and (3E) with the remaining sections being renumbered.
4. In section 1 of the Act we suggest that, in order to achieve consistency, the test of whether a person should be regarded as maintained by the deceased should mirror that in the Inheritance (Provision for Family and Dependants) Act 1975.
5. We consider it may be helpful (and that it is logical) to include in the part of the Bill dealing with damages for gratuitous care a provision enabling the court, if it sees fit, to make a direct award of damages to one or more carers despite their not being parties to the action.
6. We have no views on the application of aggravated damages in Scotland.
7. We have no comments on the impact assessment.

Interest: Questions 1 and 2

8. We consider the drafting of section 12 giving powers to bring in secondary legislation is far too widely drafted and substantially and undesirably restricts the discretion of judges to award or not to award interest. Secondary legislation should merely enable the rates of simple and compound interest to be fixed.
9. We have no comments on the impact assessment.

Distribution of Estates: Questions 1 and 2

10. We have no comments either on the draft bill or the impact assessment.

Rights of Appeal

11. We have no comments either on the draft bill or the impact assessment.

Civil Sub-Committee
Council of Her Majesty's Circuit Judges
8th January 2010