

Negligence and Damages Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by Andy McDonald, are published separately as Bill 76 – EN.

Negligence and Damages Bill

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TO

Make provision about liability for negligence in relation to psychiatric illness; to amend the law relating to damages in respect of personal injuries and death; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PYSCHIATRIC INJURY

1 Close tie (duty of care)

- (1) Subsection (2) imposes a duty of care for the purposes of the tort of negligence, and that subsection has effect subject to (and only to) subsections (3) and (6). 5
- (2) A person (the defendant) owes a duty to take reasonable care to avoid causing another person (the claimant) to suffer a recognisable psychiatric illness as a result of the death, injury or imperilment of a third person (the immediate victim) if it is reasonably foreseeable that the defendant’s act or omission might cause the claimant to suffer such an illness. 10
- (3) The defendant must be taken not to have owed the duty unless –
 - (a) his act or omission caused the death, injury or imperilment of the immediate victim, and
 - (b) the claimant and the immediate victim had a close tie of love and affection immediately before the act or omission occurred or immediately before the onset of the claimant’s illness (or both). 15
- (4) The duty is not imposed if the court is satisfied that its imposition would not be just and reasonable because –
 - (a) of any factor by virtue of which the defendant owed no duty of care to the immediate victims, 20
 - (b) the immediate victim voluntarily accepted the risk that the defendant’s act or omission might cause his death, injury or imperilment, or

-
- (c) the claimant was involved in conduct which is illegal or contrary to public policy.
- (5) The duty is not imposed if the claimant—
- (a) voluntarily accepted the risk of suffering the illness, or
 - (b) excluded the duty. 5
- (6) The duty is not imposed if a provision which is contained in or made under another enactment, or which has the force of law by virtue of another enactment, regulates the defendant’s duty to the claimant as regards the act or omission in place of common law rules of the tort of negligence.
- 2 Close tie (duty of care if defendant is victim) 10**
- (1) Subsection (2) imposes a duty of care for the purposes of the tort of negligence, and that subsection has effect subject to (and only to) subsections (3) to (6).
- (2) A person (the defendant) owes a duty to take reasonable care to avoid causing another person (the claimant) to suffer a recognisable psychiatric illness as a result of the death, injury or imperilment of the defendant if it is reasonably foreseeable that the defendant’s act or omission might cause the claimant to suffer such an illness. 15
- (3) The defendant must be taken not to have owed the duty unless—
- (a) his act or omission caused his death, injury or imperilment, and
 - (b) the claimant and the defendant had a close tie of love and affection immediately before the act or omission occurred or immediately before the onset of the claimant’s illness (or both). 20
- (4) The duty is not imposed if the court is satisfied that its imposition would not be just and reasonable because—
- (a) the defendant chose to cause his death, injury or imperilment, or
 - (b) the claimant was involved in conduct which is illegal or contrary to public policy. 25
- (5) The duty is not imposed if the claimant—
- (a) voluntarily accepted the risk of suffering the illness, or
 - (b) excluded the duty. 30
- (6) The duty is not imposed if a provision which is contained in or made under another enactment, or which has the force of law by virtue of another enactment, regulates the defendant’s duty to the claimant as regards the act or omission in place of the common law rules of the tort of negligence.
- 3 Meaning of close tie 35**
- (1) Subsections (2) to (4) have effect to determine whether for the purposes of section 1 the claimant and the immediate victim had a close tie of love and affection at a particular time.
- (2) If at the time concerned the claimant fell within any of the categories listed in subsection (4) he and the immediate victim must be conclusively taken to have had a close tie of love and affection at that time. 40
- (3) Otherwise it is for the claimant to show that he and immediate victim had a close tie of love and affection at the time concerned.

-
- (4) The categories mentioned in subsection (2) are –
- (a) the immediate victim’s spouse;
 - (b) any child of the immediate victim;
 - (c) any brother or sister of the immediate victim;
 - (d) the civil partner of the immediate victim; 5
 - (e) the fiancée of the immediate victim;
 - (f) a person living with the immediate victim as if married;
 - (g) a person who accepted the immediate victim as their child;
 - (h) a person brought up in the same household as the immediate victim and accepted as a child of the family; 10
 - (i) a grandparent or grandchild of the immediate victim, a person who accepted the immediate victim as a grandchild or as a grandparent;
 - (j) an aunt or uncle of the immediate victim;
 - (k) a child or other issue of a brother or sister of the immediate victim, or uncle or aunt of the immediate victim; 15
 - (l) a former spouse or civil partner of the immediate victim having become so by the virtue of the divorce or (as the case may be) dissolution of the partnership;
 - (m) colleagues of the immediate victim; or
 - (n) friends of the immediate victim. 20
- (5) Subsections (2) to (4) also have effect to determine whether for the purposes of section 2 the claimant and the defendant had a close tie of love and affection at a particular time, reading references in those subsections to the immediate victim as references to the defendant.
- 4 Close tie (abolition of common law duty) 25**
- The common law duty of care under the tort of negligence is abolished to the extent that (apart from this section) –
- (a) it would arise in respect of a recognisable psychiatric illness suffered by a person (A) as a result of the death, injury or imperilment of another (B); 30
 - (b) it would depend on the existence of a close tie of love and affection between A and B; and
 - (c) it would be imposed on the person causing the death, injury or imperilment.
- 5 Removal of certain restrictions 35**
- (1) This section amends and clarifies the law relating to a claim which –
- (a) is founded on the common law duty of care under the tort of negligence; and
 - (b) is made in respect of a recognisable psychiatric illness.
- (2) It is not a condition of the claim’s success that the illness was induced by a shock. 40
- (3) It is not a condition of the claim’s success that the claimant was close in time and space to the act or omission which causes the death, injury or imperilment of the immediate victim.

PART 2

DAMAGES FOR PERSONAL INJURIES

6 Damages to injured person whose expectation of life is diminished

- (1) This section applies to an action for damages in respect of personal injuries suffered by a claimant whose date of death is expected to be earlier than had the injuries not been suffered. 5
- (2) If the claimant –
- (a) was at any time,
 - (b) is, or
 - (c) is likely to become,
- aware of the reduced expectation of life, the court is to have regard to the extent to which the claimant, in consequence of that awareness, has suffered, or is likely to suffer, in assessing the amount of damages by way of pain, suffering and loss of amenity. 10
- (3) Subject to subsection (2), no damages by way of pain, suffering and loss of amenity are recoverable by the claimant in respect of loss of expectation of life. 15
- (4) In making an award of damages by way of pain, suffering and loss of amenity, the court is not required to ascribe specifically any part of the award to loss of expectation of life.
- (5) In assessing the amount of any pecuniary loss in respect of the period after the date of judgment the court is to assume that the claimant will live until the date when death would have been expected had the injuries not been suffered (the “notional date of death”). 20
- (6) Such part of that amount as is attributable to the period between the expected date of death and notional date of death (the “lost period”) is to be assessed as follows – 25
- (a) the court is to estimate what (if anything) the claimant would have earned during the lost period through the claimant’s own labour or own gainful activity had the injuries not been suffered;
 - (b) the court may, if it thinks fit, add to the amount so estimated (whether or not that amount is nil) an amount equivalent to all or part of what it estimates the claimant would have received by way of relevant benefits during the lost period had the injuries not been suffered; and 30
 - (c) the court is then to deduct, from the total amount obtained by the virtue of paragraphs (a) and (b), 25% of that amount (to represent what would have been the claimant’s living expenses during the lost period had the injuries not been suffered). 35
- Save that, if satisfied that it is necessary to do so for the purpose of avoiding a manifestly and materially unfair result, the court may apply a different percentage to that specified in subsection (c). 40
- (7) In paragraph (b) of subsection (6), “relevant benefits” means benefits in money or money’s worth other than benefits –
- (a) derived from the claimant’s own estate; or
 - (b) consisting of such earnings as are mentioned in paragraph (a) of that subsection. 45

7 Vesting deceased’s right in personal representative

- (1) There are vested in a deceased person’s personal representative (E) the like rights to damages, including a right to damages for non-pecuniary loss, in respect of injuries suffered by the deceased (A) and vested in A immediately before A’s death, being – 5
- (a) personal injuries; or
 - (b) injuries which, though not personal injuries, are –
 - (i) injuries to name or reputation, or
 - (ii) injuries resulting from harassment actionable under section 3 of the Protection from Harassment Act 1997. 10
- (2) The “like rights” mentioned in subsection (1) do not include any right to damages by way of compensation for pecuniary loss attributable to any period after the day of death; and in determining the amount of damages for non-pecuniary loss payable to E by virtue of this section, the only period to which the court is to have regard is that ending immediately before A’s death. 15
- (3) In so far as a right to damages vested in A comprises a right to damages for non-pecuniary loss in respect of such injuries as are mentioned in subparagraph (i) of subsection (1)(b), that right is transferable to E only if an action to enforce the right is brought by A and is not concluded before A’s death.
- (4) For the purposes of subsection (3) an action is not to be taken to be concluded – 20
- (a) within the time for an appeal to be brought; or
 - (b) before any appeal is disposed of.

PART 3

BEREAVEMENT DAMAGES

8 Applications of sections 9 and 10 25

- (1) Sections 9 and 10 apply where (A) dies in consequences of suffering personal injuries as the result of the act or omission of another person (B) and the act or omission –
- (a) gives rise to liability to pay damages to A (or to A’s personal representative); or
 - (b) would have given rise to such liability but for A’s death. 30

9 Sums of damages payable to relatives

- (1) B is liable under this subsection to pay –
- (a) to any relative of A who is a member of A’s immediate family, such sums of damages as are mentioned in paragraphs (a) and (b) of subsection (2); and
 - (b) to any other relative of A, such sum of damages as is mentioned in paragraph (a) of that subsection. 35
- (2) The sums of damages are –
- (a) such sums as will compensate for any loss of dependency which as a result of the act or omission is sustained, or is likely to be sustained, by the relative after the date of A’s death together with any reasonable expenses incurred by the relative in connection with A’s funeral; and 40

- (b) such sum, if any, as the court thinks justified by way of compensation for all or any of the following –
- (i) distress and anxiety endured by the relative in contemplation of the suffering of A before A’s death;
 - (ii) grief and sorrow of the relative caused by A’s death; 5
 - (iii) the loss of such non-pecuniary benefit as the relative might have been expected to derive from A if A had not died.
- (3) The court, in making an award under paragraph (b) of subsection (2) is not required to ascribe any part of the award specifically to any of the sub-paragraphs of that paragraph. 10
- (4) For the purpose of subsection (1)(a) –
- (a) a relative of A is a member of A’s immediate family if the relative falls within any of the paragraphs (a) to (d) of the definition of “relative” in section 15(1);
 - (b) paragraphs (a)(i) and (b) of section 15(2) are to be disregarded. 15

10 Assessment of compensation for loss of dependency

- (1) Such part of an award under paragraph (a) of section 9(2) as consists of a sum in compensation for loss of dependency is to be assessed, applying the following paragraphs –
- (a) the total amount to be available to support A’s relatives is an amount equivalent to 75% of A’s net income; 20
 - (b) in the case of any other relative than –
 - (i) a person described in paragraph (a) of the definition of “relative” in section 15(1); or
 - (ii) a dependent child, 25
 the relative is not to be awarded more in compensation for loss of dependency than the actual amount of that loss;
 - (c) If –
 - (i) no such other relative is awarded a sum in compensation for loss of dependency, the total amount mentioned in paragraph (a) is to be taken to be spent by A in supporting such of A’s relatives as are mentioned in sub-paragraphs (i) and (ii) of paragraph (b); 30
 - (ii) any such other relative is awarded a sum in compensation for loss of dependency, the total amount mentioned in paragraph (a) is, after deduction of the amount of the sum so awarded, to be taken to be spent by A in supporting such of A’s relatives as are mentioned in those sub-paragraphs; and 35
 - (d) Any multiplier applied by the court –
 - (i) is to run from the date of the judgment; and 40
 - (ii) is to apply only in respect of future loss of dependency.
- (2) But, if satisfied that it is necessary to do so for the purpose of avoiding a manifestly and materially unfair result, the court may apply a different percentage to that specified in subsection (1)(a).
- (3) In subsection (1)(b)(ii), “dependent child” means a child who as at the date of A’s death – 45
- (a) has not attained the age of 18; and

- (b) is owed an obligation of child support by A.

11 Further provision regarding relative’s entitlement to damages

- (1) Subject to subsection (3), in assessing for the purpose of section 9 the amount of any loss of dependency sustained by a relative of A, no account is to be taken of— 5
- (a) any pecuniary gain or advantage which has accrued or will or may accrue to the relative, by way of succession or settlement, from A or from any other person; or
- (b) any benefit which has accrued or may accrue as a result of A’s death.
- (2) Where A has been awarded a provisional award of damages under section 32A of the Senior Courts Act 1981, the making of that award does not prevent liability from arising under section 9(1); but in assessing for the purpose of section 9 the amount of any loss of dependency sustained by a relative the court is to take into account such part of the provisional award relating to a future pecuniary loss as was intended to compensate A for a period beyond the date on which A died. 10 15
- (3) In order to establish loss of dependency for the purpose of section 9, it is not essential for a relative to show that A was, or might have become, subject to a duty in law to provide support for, or contribute to the support of, the relative; but if any such fact is established it may be taken into account in determining whether, and if so to what extent, A would (had A not died) have been likely to provide, or contribute to, such support. 20
- (4) Except as provided for in this Act or in any other enactment, no person is entitled by reason of relationship to damages in respect of the death of another person. 25
- (5) In subsection (4), “damages” includes damages by way of pain, suffering and loss of amenity.

12 Vesting of relative’s right in personal representative

- (1) This section applies where liability to pay damages to a relative (R) has arisen under section 9 but R dies. 30
- (2) If the right to damages is vested in R immediately before R’s death that right is vested to R’s personal representative (E); but in determining the amount of damages payable to E by virtue of this section, the only period to which the court is to have regard is the period ending immediately before R’s death.

13 Enforcement by personal representative of rights vested under section 7 or 12 35

- (1) Where a right is vested by virtue of section 7 or 12, the personal representative in question is entitled—
- (a) to bring an action to enforce it; or
- (b) if an action to enforce it was brought by the deceased but not concluded before the date of death, to be listed as claimant in that action. 40
- (2) For the purposes of subsection (1)(b) an action is not to be taken to be concluded—
- (a) within the time for an appeal to be brought; or
- (b) before any appeal taken is disposed of.

14 Personal representative’s claim not excluded by relative’s claim etc.

- (1) A claim made by virtue of this Act by a deceased’s personal representative is not excluded by a claim so made by a relative of the deceased (or by such a relative’s personal representative).
- (2) A claim made by a relative of the deceased (or by such a relative’s personal representative) is not excluded by a claim so made by the deceased’s personal representative. 5

15 Interpretation

- (1) In part 1 and part 3 of this Act, unless the context otherwise requires, “personal injuries” means – 10
- (a) any disease, and
 - (b) any impairment of a person’s physical or mental condition.
- (2) In part 1 and part 3 of this Act, unless the context otherwise requires, “relative”, in relation to a person who has died, means a person who –
- (a) immediately before death is the deceased’s spouse or civil partner or is living with the deceased as if married to, or in civil partnership with, the deceased; 15
 - (b) is a parent or child of the deceased, accepted the deceased as a child of the person’s family or was accepted by the deceased as a child of the deceased’s family; 20
 - (c) is the brother or sister of the deceased or was brought up in the same household of the deceased and accepted as a child of the family in which the deceased was a child;
 - (d) is a grandparent or grandchild of the deceased, accepted the deceased as a grandchild or the person or was accepted by the deceased as a grandchild of the deceased; 25
 - (e) is an ascendant or descendant of the deceased (other than a parent or grandparent or a child or grandchild of the deceased);
 - (f) is an uncle or aunt of the deceased;
 - (g) is a child or other issue of – 30
 - (i) a brother or sister of the deceased; or
 - (ii) an uncle or aunt of the deceased;
 - (h) is a former spouse or civil partner of the deceased having become so by the virtue of divorce or (as the case may be) dissolution of the partnership; 35
 - (i) is the fiancée of the deceased.
- (3) In deducing a relationship for the purposes of the definition of “relative” in subsection (2) –
- (a) any relationship – 40
 - (i) by affinity is to be treated as a relationship by consanguinity;
 - (ii) of the half blood is to be treated as a relationship of the whole blood; and
 - (b) a stepchild of the person is to be treated as the person’s child.
- (4) In any enactment passed or made before this Act, unless the context otherwise requires, any reference to – 45
- (a) pain, suffering and loss of amenity in respect of the death of any person (however expressed); or

(b) a loss of society award,
is to be construed as a reference to an award under paragraph (b) of section 9(3).

PART 4

FINAL PROVISIONS

5

16 Repeals

The enactments mentioned in the Schedule of this Act are repealed to the extent mentioned in the second column of that Schedule.

17 Extent, commencement, and short title

- (1) This Act extends to England and Wales only. 10
- (2) This Act comes into force on the day after the day on which it receives Royal Assent.
- (3) Sections 1 to 4 apply if the act or omission causing the death, injury or imperilment occurs on or after the appointed day.
- (4) Section 5 applies if the defendant's act or omission occurs on or after the appointed day. 15
- (5) The appointed day is such day as the Lord Chancellor or Secretary of State appoints for the purposes of this Act by order made by statutory instrument.
- (6) The Act may be cited as the Negligence and Damages Act 2016.

SCHEDULE

Section 16

REPEALS

<i>Short title</i>	<i>Extent of repeal</i>
Fatal Accident Act 1976 (c. 30) Law Reform (Miscellaneous Provisions) Act 1934 (c. 41)	The whole Act Section 1

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Negligence and Damages Bill

A

B I L L

To make provision about liability for negligence in relation to psychiatric illness; to amend the law relating to damages in respect of personal injuries and death; and for connected purposes.

Presented by Andy McDonald

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to be Printed, 13 October 2015.*

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