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STATUTORY INSTRUMENTS

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1977 No. 1251 (N.I. 18)

NORTHERN IRELAND

**The Fatal Accidents (Northern Ireland) Order 1977**

*Laid before Parliament in draft*

*Made* 26th July 1977

*Coming into Operation* 26th August 1977

ARRANGEMENT OF ORDER

Article

1. Title and commencement.
2. Interpretation.
3. Right of action for wrongful act causing death.
4. Persons entitled to bring the action.
5. Assessment of damages.
6. Assessment of damages: disregard of certain benefits.
7. Contributory negligence.
8. Consequential amendments and repeals, and transitional provisions.

SCHEDULES:

Schedule 1—Consequential amendments.

Schedule 2—Repeals.

At the Court at Buckingham Palace, the 26th day of July 1977

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 (a) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

*Title and commencement*

1.—(1) This Order may be cited as the Fatal Accidents (Northern Ireland) Order 1977.

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(a) 1974 c. 28.

(2) This Order shall come into operation at the expiration of a period of one month from the day on which it is made.

*Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954 (a) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “dependant” means—

- (a) the wife or husband of the deceased,
- (b) any person who is a parent or grandparent of the deceased,
- (c) any person who is a child or grandchild of the deceased, and
- (d) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased;

and “the deceased” has the meaning given by Article 3 (2).

(3) In deducing any relationship for the purposes of paragraph (2)—

- (a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and subject thereto,
- (b) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child; and
- (c) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(4) In paragraph (3) “adopted” means adopted in pursuance of a court order made in any part of the United Kingdom, the Isle of Man or any of the Channel Islands or by a foreign adoption within the meaning of the Adoption (Hague Convention) Act (Northern Ireland) 1969 (b).

(5) Any reference in this Order to injury includes any disease and any impairment of a person’s physical or mental condition.

*Right of action for wrongful act causing death*

3.—(1) If death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Every such action shall be for the benefit of the dependants of the person (“the deceased”) whose death has been so caused.

*Persons entitled to bring the action*

4.—(1) The action shall be brought by and in the name of the executor or administrator of the deceased.

(2) If—

- (a) there is no executor or administrator of the deceased, or
- (b) no action is brought within six months after the death by and in the name of an executor or administrator of the deceased,

the action may be brought by and in the name of all or any of the dependants.

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(a) 1954 c. 33 (N.I.).

(b) 1969 c. 22 (N.I.).

(3) Not more than one action shall lie for and in respect of the same subject matter of complaint.

(4) The plaintiff in the action shall be required to deliver to the defendant or his solicitor full particulars of the dependants for whom and on whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

*Assessment of damages*

5.—(1) In the action such damages may be awarded as are proportioned to the injury resulting from the death to the dependants respectively, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided among the dependants in such shares as may be directed.

(2) In paragraph (1) “directed” means—

(a) where the court seized of the proceedings consists of a judge sitting with a jury, directed by the jury; and

(b) in any other case, directed by the judge.

(3) In assessing damages payable to a widow in respect of the death of her husband in an action under this Order there shall not be taken into account the remarriage of the widow or her prospects of remarriage.

(4) If the dependants have incurred funeral expenses in respect of the deceased, damages may be awarded in respect of those expenses.

(5) Money paid into court in satisfaction of a cause of action under this Order may be in one sum without specifying the dependants’ shares.

*Assessment of damages: disregard of certain benefits*

6.—(1) In assessing damages in respect of a person’s death in an action under this Order there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death.

(2) In this Article—

“benefit” means benefit under the enactments relating to social security, including enactments in force in Great Britain, and any payment by a friendly society or trade union for the relief or maintenance of a member’s dependants;

“insurance money” includes a return of premiums; and

“pension” includes a return of contributions and any payment of a lump sum in respect of a person’s employment.

*Contributory negligence*

7. Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate the damages recoverable would be reduced under section 2 (1) of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948 (a), any damages recoverable in an action brought for the benefit of the dependants of that person under this Order shall be reduced to a proportionate extent.

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(a) 1948 c. 23 (N.I.).

*Consequential amendments and repeals, and transitional provisions*

8.—(1) Schedule 1 contains consequential amendments.

(2) The enactments in Schedule 2 are repealed to the extent specified in the third column of that Schedule.

(3) Without prejudice to any provision of section 29 of the Interpretation Act (Northern Ireland) 1954 (effect of substituting provisions) proceedings may be taken after the commencement of this Order in respect of a death occurring before that commencement as if this Order had then been in operation.

(4) In the application of the said section 29 to any repeal made by this Order, subsections (1) and (3) (a) shall have effect with the omission of the word “statutory” wherever it occurs.

(5) For the purposes of Article 5 (3), any proceedings taken under the enactments repealed by this Order and continued by virtue of subsection (2) (c) of the said section 29 are proceedings in an action under this Order.

*N. E. Leigh,*  
Clerk of the Privy Council.

## SCHEDULES

Article 8 (1).

### SCHEDULE 1

#### CONSEQUENTIAL AMENDMENTS

*Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937 (c. 9)*

1.—(1) In section 14 (5) for “the Fatal Accidents Acts 1846 to 1908” substitute “the Fatal Accidents (Northern Ireland) Order 1977”, and for “the said Acts” substitute “that Order”.

(2) In section 16 (3) (a) for “the Fatal Accidents Acts (Northern Ireland) 1846 to 1959” substitute “the Fatal Accidents (Northern Ireland) Order 1977”.

*Statute of Limitations (Northern Ireland) 1958 (c. 10)*

2.—(1) In sections 9B and 9C for “the Fatal Accidents Act 1846”, wherever occurring, substitute “the Fatal Accidents (Northern Ireland) Order 1977”.

(2) In section 9D (6) for “section 1 of the Fatal Accidents Act 1846” substitute “Article 3 (1) of the Fatal Accidents (Northern Ireland) Order 1977”.

*Fatal Accidents Act (Northern Ireland) 1959 (c. 18)*

3. In section 1 (4) there shall be made the amendment specified in paragraph 1 (2).

*County Courts Act (Northern Ireland) 1959 (c. 25)*

4. In section 99 (3) for “the Fatal Accidents Acts 1846 to 1908” substitute “the Fatal Accidents (Northern Ireland) Order 1977”.

*Carriage by Air Act 1961 (c. 27)*

5. In section 3 for “in Northern Ireland” substitute “in Article 3 (1) of the Fatal Accidents (Northern Ireland) Order 1977”.

*Mineral Workings (Offshore Installations) Act 1971 (c. 61)*

6. In section 11 (2) for “in Northern Ireland” substitute “in Article 3 (1) of the Fatal Accidents (Northern Ireland) Order 1977”.

*Carriage by Railway Act 1972 (c. 33)*

7. In section 3 (4) after "Northern Ireland" insert "references to the Fatal Accidents Act 1846 and section 3 of that Act shall be construed as references to the Fatal Accidents (Northern Ireland) Order 1977 and Article 4 (3) of that Order and", and for "section 2 of the Fatal Accidents Act (Northern Ireland) 1959" substitute "Article 6 of that Order".

*Petroleum and Submarine Pipe-Lines Act 1975 (c. 74)*

8. In section 30 (1) for "and Northern Ireland" substitute "and in Article 3 (1) of the Fatal Accidents (Northern Ireland) Order 1977".

*Animals (Northern Ireland) Order 1976*

(S.I. 1976/1040 (N.I. 13))

9. In Article 12 for "the Fatal Accidents Acts (Northern Ireland) 1846 to 1959" substitute "the Fatal Accidents (Northern Ireland) Order 1977".

*Limitation (Northern Ireland) Order 1976*

(S.I. 1976/1158 (N.I. 18))

10. In Article 3, the amendments made in sections 9B, 9C and 9D of the Statute of Limitations (Northern Ireland) 1958 by paragraph 2 (1) and (2) above.

Article 8 (2).

SCHEDULE 2

REPEALS

Chapter	Short title	Extent of repeal
9 & 10 Vict. c. 93.	Fatal Accidents Act 1846.	The whole Act.
27 & 28 Vict. c. 95.	Fatal Accidents Act 1864.	The whole Act.
1 Edw. 8 & 1 Geo. 6 c. 9.	Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1937.	Section 15 (3).
1948 c. 23.	Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1948.	Section 2 (4). In section 6 the definition of "dependant".
1959 c. 18.	Fatal Accidents Act (Northern Ireland) 1959.	In section 1, subsections (1) to (3). Section 2. In section 3, in subsection (1) the words from "and the" onwards, and subsections (2) and (4).
1967 c. 35.	Adoption Act (Northern Ireland) 1967.	Section 27 (2).
1973 c. 38.	Social Security Act 1973.	In Schedule 27, paragraph 111.
S.I. 1976/1158 (N.I. 18).	Limitation (Northern Ireland) Order 1976.	In Schedule 1, paragraph 1.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order consolidates the Fatal Accidents Acts (Northern Ireland) 1846 to 1959, and enactments amending them, with one major change of substance. The change is the addition of a provision (Article 5 (3)) requiring a widow's remarriage, or the prospects of her remarriage, to be left out of account in assessing damages payable to her in respect of her husband's death.



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Printed in Northern Ireland by Bell, Logan & Carswell Ltd., and published by Her Majesty's Stationery Office  
21/Z45 K18 8/77

ISBN 0 11 071251 X