

DAMAGES (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 4: Sums of damages payable to relatives

29. **Section 4** re-enacts the rest of section 1(1) and section 1(2) and (3) of the 1976 Act. It makes provision about the damages that the defender may have to pay to the relatives of the victim in the case where section 3 applies, that is, in the case where the victim (“A”) dies of personal injuries caused by the defender (“B”) and B is liable to pay damages to A.
30. Subsections (1) and (2) restate the rest of section 1(1) and (2) of the 1976 Act. They provide that, in these circumstances, the defender B is liable to pay damages in terms of subsection (3) to relatives of the victim. Subsection (1) also establishes that members of the victim’s immediate family have different rights to damages than other relatives. Subsection (5) defines “immediate family” for this purpose as a subset of the definition of “relative” contained in section 14(1). The right to damages is qualified by subsection (2) which provides that no liability to relatives will arise where the victim has discharged or excluded liability before the victim’s death, or where liability is excluded by an enactment. The qualification is itself subject to an exception for mesothelioma cases, which are governed by section 5.
31. Subsection (3) specifies the damages that a defender B may be liable to pay to the deceased’s relatives. B may be liable to pay damages under paragraphs (a) and (b) to immediate family members. B may be liable to pay damages only under paragraph (a) to other relatives.
32. Paragraph (a) of subsection (3) re-enacts section 1(3) of the 1976 Act. It deals with patrimonial loss and provides that a relative will only be able to recover damages for two heads of such loss—
 - (a) the loss of support that, as a result of B’s act or omission, is, or is likely to be, suffered by that relative after A’s death; and
 - (b) the reasonable expenses incurred by that relative in connection with A’s funeral.
33. Paragraph (b) of subsection (3) re-enacts section 1(4) of the 1976 Act. It deals with non-patrimonial loss and provides that a relative will only be able to recover damages for three heads of such loss—
 - (a) distress and anxiety endured by the relative in contemplation of the suffering of A before A’s death;
 - (b) grief and sorrow of the relative caused by A’s death;
 - (c) the loss of such non-patrimonial benefit as the relative might have been expected to derive from A’s society and guidance if A had not died.
34. Section 1(4) of the 1976 Act restricted damages under that subsection to a subset of the deceased’s relatives known as the deceased’s “immediate family”. The Act maintains

*These notes relate to the Damages (Scotland) Act 2011
(asp 7) which received Royal Assent on 7 April 2011*

a distinction between the immediate family and other relatives for this purpose. The immediate family is defined as those close relatives falling into the categories set out in paragraphs (a) to (d) of the definition of “relative” in section 14(1). Only they may claim damages under section 4(3)(b) for non-patrimonial loss as well as loss of financial support. Other relatives who do not fall within the definition of immediate family but fall into the categories set out in paragraphs (e) to (h) of section 14(1) may only claim for loss of financial support.