

DAMAGES (SCOTLAND) ACT 2011

EXPLANATORY NOTES

SUMMARY AND BACKGROUND TO THE ACT

3. The Act seeks to implement the Scottish Law Commission's ("the Commission") Report on Damages for Wrongful Death ("the Report")¹, which was published on 30 September 2008.
4. Where a person suffers injury or disease as a result of the wrongful actions or omissions of another, the victim has a right, under the common law of delict, to claim damages from the wrongdoer. The Damages (Scotland) Act 1976 ("the 1976 Act"), as amended—
 - (a) regulated who can claim damages and the kind of damages that could be claimed where the victim dies as a result of such injury or disease;
 - (b) provided that the victim's right to claim damages may, in certain circumstances, pass to the victim's executor;²
 - (c) provided that the victim's relatives may also have a separate claim for the loss of support and grief and distress that they suffered because of the death; and
 - (d) made provision regarding the damages that could be claimed by the victim whose expectation of life is diminished by the injury or disease.³
5. The general purpose of the Damages (Scotland) Act 2011 is to repeal and re-enact with certain amendments the 1976 Act.
6. The 2011 Act is structured differently from the 1976 Act. It deals first with the rights of the victim (section 1) and the extent to which those rights transmit to an executor (section 2), before moving on to deal with the rights of relatives (sections 3 to 8) and the extent to which those rights transmit to a relative's executor (section 9). Further provision is made in relation to rights transmitted to executors (section 10). The remaining provisions are of a general nature.

¹ Scot Law Com No 213. <http://www.scotlawcom.gov.uk/html/reports.php#r213>

² 1976 Act, section 2

³ 1976 Act, sections 9 and 9A