



# Administration of Justice Act 1982

## 1982 CHAPTER 53

### PART II

#### DAMAGES FOR PERSONAL INJURIES ETC.—SCOTLAND

**Modifications etc. (not altering text)**

- C1** Pt. II (ss. 7–14) modified by [Consumer Protection Act 1987](#) (c. 43, SIF 109:1), **ss. 6(1)(d), 41(2), 47(1)(2)**

#### **7 Damages in respect of services.**

Where a person (in this Part of this Act referred to as “the injured person”)—

- (a) has sustained personal injuries, or
- (b) has died in consequence of personal injuries sustained,

as a result of an act or omission of another person giving rise to liability in any person (in this Part of this Act referred to as “the responsible person”) to pay damages, the responsible person shall also be liable to pay damages in accordance with the provisions of sections 8 and 9 of this Act.

#### **8 Services rendered to injured person.**

- (1) Where necessary services have been rendered to the injured person by a relative in consequence of the injuries in question, then, unless the relative has expressly agreed in the knowledge that an action for damages has been raised or is in contemplation that no payment should be made in respect of those services, the responsible person shall be liable to pay to the injured person by way of damages such sum as represents reasonable remuneration for those services and repayment of reasonable expenses incurred in connection therewith.

- [<sup>F1</sup>(2) The injured person shall be under an obligation to account to the relative for any damages recovered from the responsible person under subsection (1) above.

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*Changes to legislation: There are currently no known outstanding effects for the Administration of Justice Act 1982, Part II. (See end of Document for details)*

- (3) Where, at the date of an award of damages in favour of the injured person, it is likely that necessary services will, after that date, be rendered to him by a relative in consequence of the injuries in question, then, unless the relative has expressly agreed that no payment shall be made in respect of those services, the responsible person shall be liable to pay to the injured person by way of damages such sum as represents—
- (a) reasonable remuneration for those services; and
  - (b) reasonable expenses which are likely to be incurred in connection therewith.
- (4) The relative shall have no direct right of action in delict against the responsible person in respect of any services or expenses referred to in this section.]

#### Textual Amendments

- F1** S. 8(2)–(4) substituted (1.3.1991) by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990](#) (c. 40, SIF 76:2), [s. 69\(1\)](#); S.I. 1991/330, [art. 3](#)

## 9 Services to injured person’s relative.

- (1) The responsible person shall be liable to pay to the injured person a reasonable sum by way of damages in respect of the inability of the injured person to render the personal services referred to in subsection (3) below.
- (2) Where the injured person has died, any relative of his entitled to damages in respect of loss of support under section 1(3) of the <sup>M1</sup>Damages (Scotland) Act 1976 shall be entitled to include as a head of damage under that section a reasonable sum in respect of the loss to him of the personal services mentioned in subsection (3) below.
- (3) The personal services referred to in subsections (1) and (2) above are personal services—
- (a) which were or might have been expected to have been rendered by the injured person before the occurrence of the act or omission giving rise to liability,
  - (b) of a kind which, when rendered by a person other than a relative, would ordinarily be obtainable on payment, and
  - (c) which the injured person but for the injuries in question might have been expected to render gratuitously to a relative.
- (4) Subject to subsection (2) above, the relative shall have no direct right of action in delict against the responsible person in respect of the personal services mentioned in subsection (3) above.

#### Marginal Citations

- M1** 1976 c. 13.

## 10 Assessment of damages for personal injuries.

Subject to any agreement to the contrary, in assessing the amount of damages payable to the injured person in respect of personal injuries there shall not be taken into account so as to reduce that amount—

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- (a) any contractual pension or benefit (including any payment by a friendly society or trade union);
- (b) any pension or retirement benefit payable from public funds other than any pension or benefit to which section 2(1) of the <sup>M2</sup>Law Reform (Personal Injuries) Act 1948 applies;
- (c) any benefit payable from public funds, in respect of any period after the date of the award of damages, designed to secure to the injured person or any relative of his a minimum level of subsistence;
- (d) any redundancy payment under [<sup>F2</sup>the Employment Rights Act 1996], or any payment made in circumstances corresponding to those in which a right to a redundancy payment would have accrued if [<sup>F2</sup>section 135] of that Act had applied;
- (e) any payment made to the injured person or to any relative of his by the injured person's employer following upon the injuries in question where the recipient is under an obligation to reimburse the employer in the event of damages being recovered in respect of those injuries;
- (f) subject to paragraph (iv) below, any payment of a benevolent character made to the injured person or to any relative of his by any person following upon the injuries in question;

but there shall be taken into account—

- (i) any remuneration or earnings from employment;
- (ii) any [<sup>F3</sup>contribution-based jobseeker's allowance (payable under the Jobseekers Act 1995)];
- (iii) any benefit referred to in paragraph (c) above payable in respect of any period prior to the date of the award of damages;
- (iv) any payment of a benevolent character made to the injured person or to any relative of his by the responsible person following on the injuries in question, where such a payment is made directly and not through a trust or other fund from which the injured person or his relatives have benefited or may benefit.

#### Textual Amendments

**F2** Words in s. 10(d) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 20** (with ss. 191-195, 202)

**F3** Words in s. 10(ii) substituted (7.10.1996) by 1995 c. 18, s. 41(4), **Sch. 2 para. 6**; S.I. 1996/2208, **art. 2**

#### Marginal Citations

**M2** 1948 c. 41.

## 11 Maintenance at public expense to be taken into account in assessment of damages: Scotland.

In an action for damages for personal injuries (including any such action arising out of a contract) any saving to the injured person which is attributable to his maintenance wholly or partly at public expense in

- [<sup>F4</sup>(a) a hospital <sup>F5</sup>. . . or other institution][<sup>F6</sup>; or
- (b) accommodation provided by a care home service (as defined by section 2(3) of the Regulation of Care (Scotland) Act 2001 (asp 8),]

shall be set off against any income lost by him as a result of the injuries.

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### Textual Amendments

- F4** Words from "a hospital" to "institution" become para.(a) (1.4.2002) by [2001 asp 8, s. 79, Sch. 3 para. 9\(b\)](#); [S.S.I. 2002/162, art. 2\(h\)](#) (subject to [arts. 3-13](#))
- F5** Words in [s. 11](#) repealed (1.4.2002) by [2001 asp 8, s. 79, Sch. 3 para. 9](#); [S.S.I. 2002/162, art. 2\(h\)](#) (subject to [arts. 3-13](#))
- F6** [S. 11\(b\)](#) and word preceding it inserted (1.4.2002) by [2001 asp 8 s. 79, Sch. 3 para. 9\(c\)](#); [S.S.I. 2002/162, {art. 2\(h\)}](#) (subject to [arts. 3-13](#))

## 12 Award of provisional damages for personal injuries: Scotland.

- (1) This section applies to an action for damages for personal injuries in which—
- (a) there is proved or admitted to be a risk that at some definite or indefinite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of the action, develop some serious disease or suffer some serious deterioration in his physical or mental condition; and
  - (b) the responsible person was, at the time of the act or omission giving rise to the cause of the action,
    - (i) a public authority or public corporation; or
    - (ii) insured or otherwise indemnified in respect of the claim.
- (2) In any case to which this section applies, the court may, on the application of the injured person, order—
- (a) that the damages referred to in subsection (4)(a) below be awarded to the injured person; and
  - (b) that the injured person may apply for the further award of damages referred to in subsection (4)(b) below,
- and the court may, if it considers it appropriate, order that an application under paragraph (b) above may be made only within a specified period.
- (3) Where an injured person in respect of whom an award has been made under subsection (2)(a) above applies to the court for an award under subsection (2)(b) above, the court may award to the injured person the further damages referred to in subsection (4)(b) below.
- (4) The damages referred to in subsections (2) and (3) above are—
- (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition; and
  - (b) further damages if he develops the disease or suffers the deterioration.
- (5) Nothing in this section shall be construed—
- (a) as affecting the exercise of any power relating to expenses including a power to make rules of court relating to expenses; or
  - (b) as prejudicing any duty of the court under any enactment or rule of law to reduce or limit the total damages which would have been recoverable apart from any such duty.
- (6) The Secretary of State may, by order, provide that categories of defenders shall, for the purposes of paragraph (b) of subsection (1) above, become or cease to be responsible persons, and may make such modifications of that paragraph as appear to him to be necessary for the purpose.

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And an order under this subsection shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

### 13 Supplementary.

- (1) In this Part of this Act, unless the context otherwise requires—
- “personal injuries” includes any disease or any impairment of a person’s physical or mental condition [<sup>F7</sup>and injury resulting from defamation or any other verbal injury or other injury to reputation];
- “relative”, in relation to the injured person, means—
- (a) the spouse or divorced spouse;
  - (b) any person, not being the spouse of the injured person, who was, at the time of the act or omission giving rise to liability in the responsible person, living with the injured person as husband or wife;
  - (c) any ascendant or descendant;
  - (d) any brother, sister, uncle or aunt; or any issue of any such person;
  - (e) any person accepted by the injured person as a child of his family.
- In deducing any relationship for the purposes of the foregoing definition—
- (a) any relationship by affinity shall be treated as a relationship by consanguinity; any relationship of the half blood shall be treated as a relationship of the whole blood; and the stepchild of any person shall be treated as his child; and
  - (b) [<sup>F8</sup>section 1(1) of the Law Reform (Parent and Child)(Scotland) Act 1986 shall apply; and any reference (however expressed) in this Part of this Act to a relative shall be construed accordingly].
- (2) Any reference in this Part of this Act to a payment, benefit or pension shall be construed as a reference to any such payment, benefit or pension whether in cash or in kind.
- (3) This Part of this Act binds the Crown.

#### Textual Amendments

- F7** Words in s. 13(1) added (18.4.1993) by 1993 c. 5, ss. 7(2), 8(3), **Sch. para.4** (with s. 6(4)).
- F8** Words substituted by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 9, 10(1), **Sch. 1 para. 19**

### 14 Amendment and repeal of enactments.

- (1) Section 1(7) of the <sup>M3</sup>Damages (Scotland) Act 1976 is amended by inserting after the word “section” the words “ or in Part II of the Administration of Justice Act 1982 ”.
- (2) Section 5 of that Act (provisions for the avoidance of multiplicity of auctions) is repealed, and—
- (a) in section 4 of that Act the words “but this section is without prejudice to section 5 of this Act” shall cease to have effect, and
  - (b) in section 6 of that Act—
    - (i) in subsection (1) for the words “section 5 of this Act” there shall be substituted the words “ this section ”, and

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(ii) after subsection (2) there shall be inserted—

“(3) This section applies to any action in which, following the death of any person from personal injuries, damages are claimed—

- (a) by the executor of the deceased, in respect of the injuries from which the deceased died;
- (b) in respect of the death of the deceased, by any relative of his.”.

(3) Notwithstanding section 73(5) of this Act, where an action to which section 5 of that <sup>M4</sup>Act applies has been raised and has not, prior to the commencement of subsection (2) above, been disposed of, the court shall not dismiss the action on the ground only that the pursuer has failed to serve notice of the action as required by subsection (6) of the said section 5.

(4) In section 10(2) of the said Act of 1976 (meaning of “deceased person’s immediate family”), after the word “(a)” there shall be inserted the word “ (aa) ”, and in paragraph 1 of Schedule 1 to that Act there shall be inserted after sub-paragraph (a) the following—

“(aa) any person, not being the spouse of the deceased, who was, immediately before the deceased’s death, living with the deceased as husband or wife;”.

**Modifications etc. (not altering text)**

**C2** The text of s. 4, 6(1)(2), 14(1)(2)(4), 15(1)(3)(6), 16–19, 28(7), 34, 35, 49–54, 56–59, 61, 63–67, 69(1)(2), 70, 72(1), 75, Sch. 1 Pts. I, III, IV, Sch. 3 Pt. III para. 7, Sch. 4 Pt. I, Sch. 6 paras. 2–9, Sch. 7 Pts. I, II, Sch. 7 Pt. III paras 2, 3, Sch. 8, Sch. 9 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Marginal Citations**

**M3** 1976 c. 13.

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