



# Compensation Act 2006

## 2006 CHAPTER 29

### PART 1

#### STANDARD OF CARE

#### **1 Deterrent effect of potential liability**

A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might—

- (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
- (b) discourage persons from undertaking functions in connection with a desirable activity.

#### **2 Apologies, offers of treatment or other redress**

An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.

#### **3 Mesothelioma: damages**

(1) This section applies where—

- (a) a person (“the responsible person”) has negligently or in breach of statutory duty caused or permitted another person (“the victim”) to be exposed to asbestos,
- (b) the victim has contracted mesothelioma as a result of exposure to asbestos,
- (c) because of the nature of mesothelioma and the state of medical science, it is not possible to determine with certainty whether it was the exposure mentioned in paragraph (a) or another exposure which caused the victim to become ill, and
- (d) the responsible person is liable in tort, by virtue of the exposure mentioned in paragraph (a), in connection with damage caused to the victim by the disease

*Status: Point in time view as at 25/07/2006.*

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(whether by reason of having materially increased a risk or for any other reason).

- (2) The responsible person shall be liable—
  - (a) in respect of the whole of the damage caused to the victim by the disease (irrespective of whether the victim was also exposed to asbestos—
    - (i) other than by the responsible person, whether or not in circumstances in which another person has liability in tort, or
    - (ii) by the responsible person in circumstances in which he has no liability in tort), and
  - (b) jointly and severally with any other responsible person.
- (3) Subsection (2) does not prevent—
  - (a) one responsible person from claiming a contribution from another, or
  - (b) a finding of contributory negligence.
- (4) In determining the extent of contributions of different responsible persons in accordance with subsection (3)(a), a court shall have regard to the relative lengths of the periods of exposure for which each was responsible; but this subsection shall not apply—
  - (a) if or to the extent that responsible persons agree to apportion responsibility amongst themselves on some other basis, or
  - (b) if or to the extent that the court thinks that another basis for determining contributions is more appropriate in the circumstances of a particular case.
- (5) In subsection (1) the reference to causing or permitting a person to be exposed to asbestos includes a reference to failing to protect a person from exposure to asbestos.
- (6) In the application of this section to Scotland—
  - (a) a reference to tort shall be taken as a reference to delict, and
  - (b) a reference to a court shall be taken to include a reference to a jury.
- (7) The Treasury may make regulations about the provision of compensation to a responsible person where—
  - (a) he claims, or would claim, a contribution from another responsible person in accordance with subsection (3)(a), but
  - (b) he is unable or likely to be unable to obtain the contribution, because an insurer of the other responsible person is unable or likely to be unable to satisfy the claim for a contribution.
- (8) The regulations may, in particular—
  - (a) replicate or apply (with or without modification) a provision of the Financial Services Compensation Scheme;
  - (b) replicate or apply (with or without modification) a transitional compensation provision;
  - (c) provide for a specified person to assess and pay compensation;
  - (d) provide for expenses incurred (including the payment of compensation) to be met out of levies collected in accordance with section 213(3)(b) of the Financial Services and Markets Act 2000 (c. 8) (the Financial Services Compensation Scheme);
  - (e) modify the effect of a transitional compensation provision;

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- (f) enable the Financial Services Authority to amend the Financial Services Compensation Scheme;
  - (g) modify the Financial Services and Markets Act 2000 in its application to an amendment pursuant to paragraph (f);
  - (h) make, or require the making of, provision for the making of a claim by a responsible person for compensation whether or not he has already satisfied claims in tort against him;
  - (i) make, or require the making of, provision which has effect in relation to claims for contributions made on or after the date on which this Act is passed.
- (9) Provision made by virtue of subsection (8)(a) shall cease to have effect when the Financial Services Compensation Scheme is amended by the Financial Services Authority by virtue of subsection (8)(f).
- (10) In subsections (7) and (8)—
- (a) a reference to a responsible person includes a reference to an insurer of a responsible person, and
  - (b) “transitional compensation provision” means a provision of an enactment which is made under the Financial Services and Markets Act 2000 and—
    - (i) preserves the effect of the Policyholders Protection Act 1975 (c. 75),  
or
    - (ii) applies the Financial Services Compensation Scheme in relation to matters arising before its establishment.
- (11) Regulations under subsection (7)—
- (a) may include consequential or incidental provision,
  - (b) may make provision which has effect generally or only in relation to specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

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