

# DAMAGES (SCOTLAND) ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 2: Transmission of deceased's rights to executor*

21. [Section 2](#) re-enacts section 2 of the 1976 Act, with minor changes. It makes provision for the transmission of the deceased victim's right to sue to the victim's executor.
22. Subsection (1) restates section 2(1) of the 1976 Act. It provides that "the like rights" to damages (including damages for non-patrimonial loss or *solatium*) in respect of injuries that are vested in the deceased victim immediately before death transmit to the victim's executor.
23. For this purpose, "injuries" are defined as—
  - (a) personal injuries; and
  - (b) injuries which, although not personal, are (i) injuries to name or reputation and (ii) injuries resulting from harassment actionable under section 8 of the [Protection from Harassment Act 1997 \(c.40\)](#).
24. This restates the effect of section 2(1) of the 1976 Act but distinguishes between personal and non-personal injuries in view of the definition of "personal injuries" in section 14(1) of the Act, which excludes non-personal injuries.
25. Subsection (2) restates section 2(2) and (3) of the 1976 Act. It limits the extent to which the deceased's right to damages transmits to the executor. It does so by defining what is meant by "the like right" to damages so as to exclude any right to damages for patrimonial loss, or for non-patrimonial loss, in respect of any period after the date of the deceased's death. This is to avoid overcompensation where the deceased's relatives will have a claim for patrimonial loss in terms of section 4(3)(a), and to reflect the fact that the deceased's sufferings are taken to end with the deceased's death.
26. Subsection (3) restates section 2(4) of the 1976 Act. It makes provision for the special case where the deceased had a right to damages for non-patrimonial loss arising from defamation, verbal injury or other injury to reputation. It provides that the right to damages only transmits to the deceased's executor if the deceased had raised an action to enforce the right before death and the action had not been concluded by the date of the deceased's death. In other words, an executor may be sisted into a defamation action that has already been raised, but the executor cannot raise a new action in which damages are sought only for non-patrimonial loss. If the victim had sustained patrimonial loss as a result of the defamation, however, the executor will have title to sue by virtue of subsection (1).
27. Subsection (4) explains what is meant by an action being concluded in terms of subsection (3). This repeats the provision in section 2A(2) of the 1976 Act.