



# Damages (Scotland) Act 1976

## 1976 CHAPTER 13

### S

An Act to amend the law of Scotland relating to the damages recoverable in respect of deaths caused by personal injuries; to define the rights to damages in respect of personal injuries and death which are transmitted to an executor; to abolish rights to assythment; to make provision relating to the damages due to a pursuer for patrimonial loss caused by personal injuries whereby his expectation of life is diminished; and for purposes connected with the matters aforesaid.

[13th April 1976]

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

- C1 Act restricted by [Merchant Shipping Act 1979](#) (c. 39, SIF 111), ss. 17-19, 49, 51(2), [Sch. 4 Pt. I art. 7, Pt. II para. 6\(2\)](#)
- C2 Act modified by [Consumer Protection Act 1987](#) (c. 43, SIF 109:1), ss. 6, 41(2), 47(1)(2)

### 1 Rights of relatives of a deceased person. S

- (1) Where a person dies in consequence of personal injuries sustained by him as a result of an act or omission of another person, being an act or omission giving rise to liability to pay damages to the injured person or his executor, then, subject to the following provisions of this Act, the person liable to pay those damages (in this section referred to as “the responsible person”) shall also be liable to pay damages in accordance with this section to any relative of the deceased, being a relative within the meaning of Schedule 1 to this Act.
- (2) No liability shall arise under this section if the liability to the deceased or his executor in respect of the act or omission has been excluded or discharged (whether by antecedent agreement or otherwise) by the deceased before his death, or is excluded by virtue of any enactment.
- (3) The damages which the responsible person shall be liable to pay to a relative of a deceased under this section shall (subject to the provisions of this Act) be such as will

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compensate the relative for any loss of support suffered by him since the date of the deceased's death or likely to be suffered by him as a result of the act or omission in question, together with any reasonable expense incurred by him in connection with the deceased's funeral.

- (4) If the relative is a member of the deceased's immediate family (within the meaning of section 10(2) of this Act) there shall be awarded, without prejudice to any claim under subsection (3) above, such sum of damages, if any, as the court thinks just by way of compensation for <sup>F1</sup>all or any of the following—
- (a) distress and anxiety endured by the relative in contemplation of the suffering of the deceased before his death;
  - (b) grief and sorrow of the relative caused by the deceased's death;
  - (c) the loss of such non-patrimonial benefit as the relative might have been expected to derive from the deceased's society and guidance if the deceased had not died,

and the court in making an award under this subsection shall not be required to ascribe specifically any part of the award to any of paragraphs (a), (b) and (c) above.]

- (5) <sup>F2</sup>Subject to subsection (5A) below,] in assessing for the purposes of this section the amount of any loss of support suffered by a relative of a deceased no account shall be taken of—
- (a) any patrimonial gain or advantage which has accrued or will or may accrue to the relative from the deceased or from any other person by way of succession or settlement;
  - (b) any insurance money, benefit, pension or gratuity which has been, or will be or may be, paid as a result of the deceased's death;

and in this subsection—

“benefit” means benefit under the <sup>M1</sup>Social Security Act 1975 or the <sup>M2</sup>Social Security (Northern Ireland) Act 1975, and any payment by a friendly society or trade union for the relief or maintenance of a member's dependants;

“insurance money” includes a return of premiums; and

“pension” includes a return of contributions and any payment of a lump sum in respect of a person's employment.

- <sup>F3</sup>(5A) Where a deceased has been awarded a provisional award of damages under section 12(2) of the Administration of Justice Act 1982, the making of that award does not prevent liability from arising under this section but in assessing for the purposes of this section the amount of any loss of support suffered by a relative of the deceased the court shall take into account such part of the provisional award relating to future patrimonial loss as was intended to compensate the deceased for a period beyond the date on which he died.]

- (6) In order to establish loss of support for the purposes of this section it shall not be essential for a claimant to show that the deceased was, or might have become, subject to a duty in law to provide or contribute to the support of the claimant; but if any such fact is established it may be taken into account in determining whether, and if so to what extent, the deceased, if he had not died, would have been likely to provide or contribute to such support.
- (7) Except as provided in this section <sup>F4</sup>or in Part II of the Administration of Justice Act 1982] <sup>F5</sup>or under regulation 3 of the Railways (Convention on International Carriage by Rail) Regulations 2005] no person shall be entitled by reason of relationship to

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damages (including damages by way of solatium) in respect of the death of another person.

#### Textual Amendments

- F1** Words in s. 1(4) substituted (18.4.1993) by 1993 c. 5, **ss. 1(1), 8(3)** (with s. 6(4)).
- F2** Words in s. 1(5) added (18.4.1993) by 1993 c. 5, **ss. 1(2), 8(3)** (with s. 6(4)).
- F3** S. 1(5A) inserted (18.4.1993) by 1993 c. 5, **ss. 1(3), 8(3)**, (with s. 6(4)).
- F4** Words inserted by [Administration of Justice Act 1982](#) (c. 53, SIF 122:3), **ss. 14(1), 73(5)**
- F5** Words in s. 1(7) substituted (26.7.2005 coming into force in accordance with reg. 1) by [The Railways \(Convention on International Carriage by Rail\) Regulations 2005](#) (S.I. 2005/2092), reg. 1, **Sch. 3 para. 1**

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

- C3** S. 1 modified by [Consumer Protection Act 1987](#) (c. 43, SIF 109:1), **ss. 6(1)(c), 41(2), 47(1)(2)**
- C4** S. 1 amended (prosp.) by [Antarctic Minerals Act 1989](#) (c. 21, SIF 86), **ss. 13(1)(b)(2), 20(2)**
- C5** S. 1(3) amended by [Administration of Justice Act 1982](#) (c. 53, SIF 122:3), **ss. 9(2)-(4), 73(5)**
- C6** S. 1(5) extended (S.) by [International Transport Conventions Act 1983](#) (c. 14, SIF 102), s. 3(6), **Sch. 1 para. 2**
- C7** S. 1(5) applied (26.7.2005 coming into force in accordance with reg. 1) by [The Railways \(Convention on International Carriage by Rail\) Regulations 2005](#) (S.I. 2005/2092), reg. 1, **Sch. 1 para. 2**

#### Marginal Citations

- M1** 1975 c. 14.
- M2** 1975 c. 15.

### [<sup>F6</sup>1A] **Transmissibility to executor of rights of deceased relative.** **S**

Any right to damages under any provision of section 1 of this Act which is vested in the relative concerned immediately before his death shall be transmitted to the relative's executor; but, in determining the amount of damages payable to an executor by virtue of this section, the court shall have regard only to the period ending immediately before the relative's death.]

#### Textual Amendments

- F6** **S. 1A** inserted (18.4.1993) by 1993 c. 5, **ss.2, 8(3)** (with s. 6(1)(2)(4)(5)(9)).

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

- C8** **S. 1A** amended (18.4.1993) by 1993 c. 5, **ss. 6(1)(2), 8(3)**.  
**S. 1A** extended (18.4.1993) by 1993 c. 5, **ss. 6(5), 8(3)**.

### [<sup>F7</sup>2] **Rights transmitted to executor in respect of deceased person's injuries.** **S**

- (1) Subject to the following provisions of this section, there shall be transmitted to the executor of a deceased person the like rights to damages in respect of personal injuries (including a right to damages by way of solatium) sustained by the deceased as were vested in him immediately before his death.

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- (2) There shall not be transmitted to the executor under this section a right to damages by way of compensation for patrimonial loss attributable to any period after the deceased’s death.
- (3) In determining the amount of damages by way of solatium payable to an executor by virtue of this section, the court shall have regard only to the period ending immediately before the deceased’s death.
- (4) In so far as a right to damages vested in the deceased comprised a right to damages (other than for patrimonial loss) in respect of injury resulting from defamation or any other verbal injury or other injury to reputation sustained by the deceased, that right shall be transmitted to the deceased’s executor only if an action to enforce that right had been brought by the deceased before his death and had not been concluded by then within the meaning of section 2A(2) of this Act.]

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**Textual Amendments**

F7 S. 2 substituted (18.4.1993) by 1993 c. 5, ss.3, 8(3) (with s. 6(4)(6)-(9)).

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

C9 S. 2 extended (18.4.1993) by 1993 c. 5, ss. 6(6), 8(3).

[<sup>F8</sup>2A **Enforcement by executor of rights transmitted to him.** S

- (1) For the purpose of enforcing any right transmitted to an executor under section 1A or 2 of this Act the executor shall be entitled—
  - (a) to bring an action; or
  - (b) if an action for that purpose had been brought by the deceased but had not been concluded before his death, to be sisted as pursuer in that action.
- (2) For the purpose of subsection (1) above, an action shall not be taken to be concluded while any appeal is competent or before any appeal taken has been disposed of.]

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**Textual Amendments**

F8 S. 2A inserted (18.4.1993) by 1993 c. 5, ss.4, 8(3) (with s. 6(1)(2)).

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

C10 S. 2A amended (18.4.1993) by 1993 c. 5, ss. 6(1)(2), 8(3).

<sup>F9</sup>3 ..... S

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**Textual Amendments**

F9 S. 3 repealed (18.4.1993) by 1993 c. 5, ss. 7(3), 8(3) (with s. 6(4)).

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#### 4 **Executor's claim not to be excluded by relatives' claim: and vice versa.** **S**

A claim by the executor of a deceased person for damages under section 2 of this Act is not excluded by the making of a claim by a relative of the deceased for damages under section 1 of this Act; <sup>F10</sup>or by a deceased relative's executor under section 1A of this Act; nor is a claim by a relative of a deceased person or by a deceased relative's executor for damages under the said section 1 or (as the case may be) the said section 1A] excluded by the making of a claim by the deceased's executor for damages under the said section 2; . . . <sup>F11</sup>

##### Textual Amendments

**F10** Words in s. 4 substituted (18.4.1993) by 1993 c. 5, ss. 7(2), 8(3), **Sch. para. 1** (with s. 6(4)).

**F11** Words repealed by Administration of Justice Act 1982 (c. 53, SIF122:3), **ss. 14(2)(a)**, 73(5)

#### 5 ..... <sup>F12</sup> **S**

##### Textual Amendments

**F12** S. 5 repealed by Administration of Justice Act 1982 (c. 53, SIF 122:3), ss. 14(2)(3), 73(5), **Sch. 9 Pt. 1**

#### 6 **Limitation of total amount of liability.** **S**

- (1) Where in any action to which <sup>F13</sup>this section] applies, so far as directed against any defender, it is shown that by antecedent agreement, compromise or otherwise, the liability arising in relation to that defender from the personal injuries in question had, before the deceased's death, been limited to damages of a specified or ascertainable amount, or where that liability is so limited by virtue of any enactment, nothing in this Act shall make the defender liable to pay damages exceeding that amount; and accordingly where in such an action there are two or more pursuers any damages to which they would respectively be entitled under this Act apart from the said limitation shall, if necessary, be reduced *pro rata*.
- (2) Where two or more such actions are conjoined, the conjoined actions shall be treated for the purposes of this section as if they were a single action.
- <sup>F14</sup>(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 <sup>F15</sup>or, if the relative has died, by the relative's executor].]

##### Textual Amendments

**F13** Words substituted by Administration of Justice Act 1982 (c. 53, SIF 122:3), **ss. 14(2)(b)(i)(3)**, 73(5)

**F14** S. 6(3) inserted by Administration of Justice Act 1982 (c. 53, SIF 122:3), **ss. 14(2)(b)(i)**, 73(5)

**F15** Words in s. 6(3)(b) added (18.4.1993) by 1993 c. 5, ss. 7(2), 8(3), **Sch. para. 2** (with s. 6(4)).

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

- C11** S. 6 extended by [International Transport Conventions Act 1983 \(c. 14, SIF 102\)](#), s. 3(6), [Sch. 1 para. 2](#)
- C12** S. 6 excluded (26.7.2005 coming into force in accordance with reg. 1) by [The Railways \(Convention on International Carriage by Rail\) Regulations 2005 \(S.I. 2005/2092\)](#), reg. 1, [Sch. 1 para. 2](#)

### **7 Amendment of references in other Acts. S**

In any Act passed before this Act, unless the context otherwise requires, any reference to solatium in respect of the death of any person (however expressed) shall be construed as a reference to a loss of society award within the meaning of section 1 of this Act; and any reference to a dependant of a deceased person, in relation to an action claiming damages in respect of the deceased person's death, shall be construed as including a reference to a relative of the deceased person within the meaning of this Act.

### **8 Abolition of right of assythment. S**

After the commencement of this Act no person shall in any circumstances have a right to assythment, and accordingly any action claiming that remedy shall (to the extent that it does so) be incompetent.

### **9 Damages due to injured person for patrimonial loss caused by personal injuries whereby expectation of life is diminished. S**

- (1) This section applies to any action for damages in respect of personal injuries sustained by the pursuer where his expected date of death is earlier than it would have been if he had not sustained the injuries.
- (2) In assessing, in any action to which this section applies, the amount of any patrimonial loss in respect of the period after the date of decree—
  - (a) it shall be assumed that the pursuer will live until the date when he would have been expected to die if he had not sustained the injuries (hereinafter referred to as the “notional date of death”);
  - (b) the court may have regard to any amount, whether or not it is an amount related to earnings by the pursuer's own labour or other gainful activity, which in its opinion the pursuer, if he had not sustained the injuries in question, would have received in the period up to his notional date of death by way of benefits in money or money's worth, being benefits derived from sources other than the pursuer's own estate;
  - (c) the court shall have regard to any diminution of any such amount as aforesaid by virtue of expenses which in the opinion of the court the pursuer, if he had not sustained the injuries in question, would reasonably have incurred in the said period by way of living expenses.

### **[<sup>F16</sup>9A Solatium for loss of expectation of life. S**

- (1) In assessing, in an action for damages in respect of personal injuries, the amount of damages by way of solatium, the court shall, if—
  - (a) the injured person's expectation of life has been reduced by the injuries; and
  - (b) the injured person is, was at any time or is likely to become, aware of that reduction,

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have regard to the extent that, in consequence of that awareness, he has suffered or is likely to suffer.

- (2) Subject to subsection (1) above, no damages by way of solatium shall be recoverable in respect of loss of expectation of life.
- (3) The court in making an award of damages by way of solatium shall not be required to ascribe specifically any part of the award to loss of expectation of life.]

#### Textual Amendments

**F16** S. 9A inserted (18.4.1993) by 1993 c. 5, ss.5, 8(3) (with s. 6(3)(4)(8)).

## 10 Interpretation. **S**

- (1) In this Act, unless the context otherwise requires—

<sup>F17</sup>

“personal injuries” includes any disease or any impairment of a person’s physical or mental condition [<sup>F18</sup>and injury resulting from defamation or any other verbal injury or other injury to reputation][<sup>F19</sup>, or injury resulting from harassment actionable under section 8 of the Protection from Harassment Act 1997];

“relative”, in relation to a deceased person, has the meaning assigned to it by Schedule 1 to this Act.

- (2) References in this Act to a member of a deceased person’s immediate family are references to any relative of his who falls within sub-paragraph (a) [<sup>F20</sup>(aa)], (b) or (c) of paragraph 1 of Schedule 1 to this Act.
- (3) References in this Act to any other Act are references to that Act as amended, extended or applied by any other enactment, including this Act.

#### Textual Amendments

**F17** s. 10(1): definition of "loss of society award" repealed (18.4.1993) by 1993 c. 5, ss. 7(3), 8(3) (with s. 6(4)).

**F18** Words in s. 10(1): definition of "personal injuries" added (18.4.1993) by 1993 c. 5, ss. 7(2), 8(3), **Sch. para. 3** (with s. 6(4)).

**F19** S. 10(1): words in definition of “personal injuries” inserted (16.6.1997) by 1997 c. 40, s. 8(8); S.I. 1997/1418, **art. 2**

**F20** "(aa)" inserted by Administration of Justice Act 1982 (c. 53, SIF 112:3), **ss. 13(4), 73(5)**

## <sup>F21</sup>11

### **S**

The enactments specified in Schedule 2 to this Act are hereby repealed to the extent specified in relation thereto in the third column of that Schedule.

#### Textual Amendments

**F21** S. 11 repealed (18.4.1993) by 1993 c. 5, ss. 7(3), 8(3) (with s. 6(4)).

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**12 Citation, application to Crown, commencement and extent. S**

(1) This Act may be cited as the Damages (Scotland) Act 1976.

(2) This Act binds the Crown.

<sup>F22</sup>(3) .....

<sup>F22</sup>(4) .....

(5) This Act extends to Scotland only.

**Textual Amendments**

**F22** S. 12(3)(4) repealed (18.4.1993) by 1993 c. 5, ss. 7(3), 8(3) (with s. 6(4)).



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## SCHEDULES

### SCHEDULE 1 **S**

Section 1.

#### DEFINITION OF “RELATIVE”

- 1 In this Act “relative” in relation to a deceased person includes—
- (a) any person who immediately before the deceased’s death was the spouse of the deceased;
  - [<sup>F23</sup>(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;]
  - (b) any person who was a parent or child of the deceased;
  - (c) any person not falling within paragraph (b) above who was accepted by the deceased as a child of his family;
  - (d) any person who was an ascendant or descendant (other than a parent or child) of the deceased;
  - (e) any person who was, or was the issue of, a brother, sister, uncle or aunt of the deceased; and
  - (f) any person who, having been a spouse of the deceased, had ceased to be so by virtue of a divorce;
- but does not include any other person.

#### Textual Amendments

**F23** Sch. 1 para. 1(aa) inserted by [Administration of Justice Act 1982 \(c. 53, SIF 112:3\)](#), **ss. 14(4), 73(5)**

- 2 In deducing any relationship for the purposes of the foregoing paragraph—
- (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
  - [<sup>F24</sup>(b) section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 shall apply; and any reference (however expressed) in this Act to a relative shall be construed accordingly.]

#### Textual Amendments

**F24** Sch. 1 para. 2(b) substituted by [Law Reform \(Parent and Child\) \(Scotland\) Act 1986 \(c. 9, SIF 49:8\)](#), **ss. 9, 10(1), Sch. 1 para. 15**

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<sup>F25</sup>SCHEDULE 2 **S**

Section 11.

REPEALS.

**Textual Amendments**

**F25** Sch. 2 repealed (18.4.1993) by 1993 c. 5, ss. 7(3), 8(3) (with s. 6(4)).

<b>Chapter</b>	<b>Short Title</b>	<b>Extent of Repeal</b>
3 & 4 Geo. 6. c. 42.	Law Reform (Miscellaneous Provisions) Act 1940.	Section 2.
11 & 12 Geo. 6. c. 41.	Law Reform (Personal Injuries) Act 1948.	Section 2(5A).
1 & 2 Eliz. 2. c. 7.	Law Reform (Personal Injuries) (Amendment) Act 1953.	The whole Act
10 & 11 Eliz. 2. c. 42.	Law Reform (Damages and Solatium) (Scotland) Act 1962.	The whole Act.
1972 c. 33.	Carriage by Railway Act 1972.	Section 3(2).

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