



Damages (Scotland) Act 1976 (repealed)

1976 CHAPTER 13

1 Rights of relatives of a deceased person.

- (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) [^{F1}Except as set out in subsection (2A) below,]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.

[^{F2}(2A) Where subsection (2B) below applies—

- (a) liability arises under this section even though the liability to the deceased or the deceased's executor mentioned in subsection (2) above has been discharged as mentioned in that subsection; but
- (b) that liability is limited to the payment of such sum of damages as is awarded under subsection (4) below.

(2B) This subsection applies where—

- (a) the personal injury in consequence of which the deceased died is mesothelioma; and
- (b) the discharge of liability and the death each occurred on or after 20 December 2006 (and whether before, on or after the date on which section 1 of the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18) came into force).]

- (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 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

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question, together with any reasonable expense incurred by him in connection with the deceased's funeral.

- (4) [^{F3}Subject to subsection (4A),] 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 [^{F4}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.]

[^{F5}(4A) Notwithstanding section 10(2) of, and Schedule 1 to, this Act, no award of damages under subsection (4) above shall be made to a person related by affinity to the deceased.

- (4B) In subsection (4A), a “ person related by affinity to the deceased ” includes—
- (a) a stepchild, step-parent, stepbrother or stepsister of the deceased; and
 - (b) any person who was an ascendant or descendant of any of the step-relatives mentioned in paragraph (a).]

- (5) [^{F6}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 ^{M1}Social Security Act 1975 or the ^{M2}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.

[^{F7}(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

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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 [^{F8}or in Part II of the Administration of Justice Act 1982][^{F9}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 damages (including damages by way of solatium) in respect of the death of another person.

Textual Amendments

- F1** Words in s. 1(2) inserted (27.4.2007) by Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18), **ss. 1(2), 2(2)**
- F2** S. 1(2A)(2B) inserted (27.4.2007) by Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18), **ss. 1(3), 2(2)** (with s. 1(4))
- F3** Words in s. 1(4) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 35(2), 46(2)**; S.S.I. 2006/212, art. 2 (with art. 8)
- F4** Words in s. 1(4) substituted (18.4.1993) by 1993 c. 5, **ss. 1(1), 8(3)** (with s. 6(4)).
- F5** S. 1(4A)(4B) inserted (4.5.2006) by Family Law (Scotland) Act 2006 (asp 2), **ss. 35(3), 46(2)**; S.S.I. 2006/212, art. 2 (with art. 8)
- F6** Words in s. 1(5) added (18.4.1993) by 1993 c. 5, **ss. 1(2), 8(3)** (with s. 6(4)).
- F7** S. 1(5A) inserted (18.4.1993) by 1993 c. 5, **ss. 1(3), 8(3)**, (with s. 6(4)).
- F8** Words inserted by Administration of Justice Act 1982 (c. 53, SIF 122:3), **ss. 14(1), 73(5)**
- F9** 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)

- C1** S. 1 modified by Consumer Protection Act 1987 (c. 43, SIF 109:1), **ss. 6(1)(c), 41(2), 47(1)(2)**
- C2** S. 1 amended (prosp.) by Antarctic Minerals Act 1989 (c. 21, SIF 86), **ss. 13(1)(b)(2), 20(2)**
- C3** S. 1(3) amended by Administration of Justice Act 1982 (c. 53, SIF 122:3), **ss. 9(2)-(4), 73(5)**
- C4** S. 1(5) extended (S.) by International Transport Conventions Act 1983 (c. 14, SIF 102), s. 3(6), **Sch. 1 para. 2**
- C5** 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**
- C6** S. 1(5) applied (25.6.2010) by The Rail Passengers' Rights and Obligations Regulations 2010 (S.I. 2010/1504), regs. 1(2), **8(4)**

Marginal Citations

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

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