



Damages (Scotland) Act 1993

1993 CHAPTER 5

An Act to clarify and amend the law of Scotland concerning the right of certain relatives of a deceased person, and the right of executors, to claim damages in respect of the death of the deceased from personal injuries; to make provision regarding solatium where personal injuries result in loss of expectation of life; and for connected purposes. [18th February 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Commencement Information

II Act wholly in force at 18.4.1993 see s. 8(3)

1 Rights of relatives of a deceased person.

(1) In section 1(4) of the ^{M1}Damages (Scotland) Act 1976 (in this Act referred to as “the 1976 Act”) for the words from “the loss” to the end there shall be substituted the words “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.”

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- (2) At the beginning of subsection (5) of that section there shall be added the words “ Subject to subsection (5A) below, ”.
- (3) After subsection (5) of that section there shall be inserted the following subsection—
- “(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.”.

Marginal Citations

M1 1976 c. 13.

2 Transmissibility to executor of rights of deceased relative.

After section 1 of the 1976 Act there shall be inserted the following section—

“1A Transmissibility to executor of rights of deceased relative.

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.”.

3 Transmissibility to executor of deceased’s right to solatium for his injuries.

For section 2 of the 1976 Act there shall be substituted the following section—

“2 Rights transmitted to executor in respect of deceased person’s injuries.

- (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.
- (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

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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.”.

4 Enforcement by executor of rights transmitted to him.

After section 2 of the 1976 Act there shall be inserted the following section—

“2A Enforcement by executor of rights transmitted to him.

- (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.”

5 Solatium for loss of expectation of life.

After section 9 of the 1976 Act there shall be inserted the following section—

“9A Solatium for loss of expectation of life.

- (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,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.”.

6 Transitional and retrospective provisions.

- (1) Section 1A of the 1976 Act (as substituted by section 2 of this Act) shall have effect as if it expressly provided that the reference to a right to damages under section 1 of the 1976 Act included a reference to a right under that section as it existed at the time when the right vested, and section 2A shall have effect accordingly.
- (2) Section 1A of the 1976 Act shall also have effect as if it provided that the reference to a right to damages under section 1 of the 1976 Act included a reference to a right to

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damages by way of solatium in respect of the death of a person under the law in force before 13th May 1976, and section 2A shall have effect accordingly.

- (3) Section 9A of the 1976 Act shall not affect any proceedings commenced before this Act comes into operation.
- (4) Subject to the following provisions of this section, this Act shall have effect only in relation to deaths occurring on or after its commencement.
- (5) Notwithstanding section 3 of the 1976 Act, section 1A of that Act shall have effect, subject to subsection (8) below, in the case of the death on or after 16 July 1992 of the relative concerned.
- (6) Notwithstanding section 2 of the 1976 Act as it existed prior to the commencement of this Act, that section as substituted by section 3 of this Act shall have effect, subject to subsections (7) and (8) below, in the case of the death on or after 16 July 1992 of a person in whom was vested immediately before his death a right to damages in respect of personal injuries.
- (7) Subsection (6) above shall not apply in the case of a death before the commencement of this Act in so far as it would enable an executor to recover 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.
- (8) Neither subsection (5) nor (6) above shall apply where the rights to damages which transmitted to the deceased's executor under section 1 or 2 of the 1976 Act prior to the commencement of this Act have been subject to—
 - (a) a full and final settlement; or
 - (b) determination by a court in a final judgment within the meaning of section 19A(3) of the ^{M2}Prescription and Limitation (Scotland) Act 1973, before the commencement of this Act.
- (9) In calculating whether a claim made by an executor by virtue of subsection (5) or (6) above is unenforceable by virtue of the provisions of Part II of the Prescription and Limitation (Scotland) Act 1973, the period starting with the date of death and ending with the commencement of this Act shall not be taken into account.

Marginal Citations

M2 1973 c. 52.

7 Interpretation, minor and consequential amendments and repeals.

- (1) In any enactment passed or made before this Act, unless the context otherwise requires, any reference to a loss of society award shall be construed as a reference to an award under section 1(4) of the 1976 Act as amended by section 1 of this Act.
- (2) The enactments mentioned in the Schedule to this Act shall have effect subject to the minor and consequential amendments respectively specified in that Schedule.
- (3) The following provisions of the 1976 Act are hereby repealed—
 - Section 3;
 - In section 10(1) the definition of “loss of society award”;
 - Section 11;

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Section 12(3) and (4);
Schedule 2.

8 Short title, application to Crown, commencement and extent.

- (1) This Act may be cited as the Damages (Scotland) Act 1993.
- (2) This Act binds the Crown.
- (3) This Act shall come into force at the end of the period of 2 months beginning with the day on which it is passed.
- (4) This Act extends to Scotland only.

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SCHEDULE

Section 7.

CONSEQUENTIAL AMENDMENTS

The Damages (Scotland) Act 1976 (c.13)

- 1 In section 4 for the words from “nor is” to “said section 1” there shall be substituted the words “ 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 ”.
- 2 At the end of section 6(3)(b) there shall be added the words “ or, if the relative has died, by the relative’s executor ”.
- 3 In section 10(1) at the end of the definition of “personal injuries” there shall be added the words “ and injury resulting from defamation or any other verbal injury or other injury to reputation ”.

The Administration of Justice Act 1982 (c.53)

- 4 In section 13(1) at the end of the definition of “personal injuries” there shall be added the words “ and injury resulting from defamation or any other verbal injury or other injury to reputation ”.

The International Transport Conventions Act 1983 (c.14)

- 5 In Schedule 1, in paragraph 1(2) for the words from “as defined in” to the end there shall be substituted the words “ or for an award under section 1(4) of the Damages (Scotland) Act 1976 as amended by section 1 of the Damages (Scotland) Act 1993. ”.

The Criminal Justice Act 1988 (c.33)

- 6 In section 111(4)(c) for the words from “for loss” to the end there shall be substituted the words “ may be made to any person who is a member of the deceased’s immediate family (within the meaning of section 10(2) of the Damages (Scotland) Act 1976), being the kind of award described in section 1(4) of that Act; and ”.

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