

COMPENSATION ACT 2006

EXPLANATORY NOTES

BACKGROUND

Negligence and Breach of Statutory Duty

7. The purpose of this provision is to address what was suggested by the Better Regulation Task Force (BRTF) report of May 2004 (*Better Routes to Redress*) to be a common misperception, that can lead to a disproportionate fear of litigation and consequent risk-averse behaviour.
8. Under the current law, for a claim in negligence or for breach of a statutory duty involving a standard of care to succeed there must be a duty of care owed by the defendant to the claimant; a breach of that duty by the defendant; and loss or injury suffered by the claimant which is causally connected with the breach. Section 1 concerns a particular aspect of the current law, relating to the second component: whether there is a breach of the duty of care.
9. The question whether there has been a breach of the duty of care involves two elements: how much care is required to be taken (the standard of care) and whether that care has been taken. The ordinary standard of care is "reasonable care"; and the question whether or not that standard has been met - whether reasonable care has been taken - is a question of fact for the court to decide, having regard to all the circumstances of the case. What amounts to reasonable care in any particular case will vary according to the circumstances. In some cases, what would be required to prevent injury of the kind suffered may be such that to demand it of the defendant would be to demand more than is reasonable.
10. This provision is intended to contribute to improving awareness of this aspect of the law; providing reassurance to the people and organisations who are concerned about possible litigation; and to ensuring that normal activities are not prevented because of the fear of litigation and excessively risk-averse behaviour.
11. This provision is not concerned with and does not alter the standard of care, nor the circumstances in which a duty to take that care will be owed. It is solely concerned with the court's assessment of what constitutes reasonable care in the case before it. It only affects statutory duties which involve a standard of care, such as those owed under the Occupiers' Liability Acts of 1957 and 1984. It does not extend to other forms of statutory duty, such as cases where there is an absolute statutory duty involving strict liability in the event of failure; cases which concern what is reasonable in a context other than carelessness; or cases where infringement of a right is actionable as a breach of statutory duty which does not depend on carelessness.
12. [Part 1](#) also contains a provision to the effect that in claims in negligence or breach of statutory duty, an apology, offer of treatment or other redress shall not of itself amount to an admission of liability.

Damages for Mesothelioma

*These notes refer to the Compensation Act 2006
(c.29) which received Royal Assent on 25 July 2006*

13. In the 2002 case of *Fairchild v Glenhaven Funeral Services Ltd and others* [2002] UKHL 22, the House of Lords decided that a person who had contracted mesothelioma after wrongful exposure to asbestos at different times by more than one negligent person could sue any of them, notwithstanding that he could not prove which exposure had actually caused the disease – because all had materially contributed to the risk of him contracting the disease. *Fairchild* did not resolve whether liability should be joint and several, although it was presumed by the parties that this would be the rule and this was the approach taken in practice. However, in *Barker v Corus UK Ltd (and conjoined cases)* [2006] UKHL 20, the House of Lords decided that the damages were instead to be apportioned among those responsible for the wrongful exposure according to their relative degree of contribution to the chance of the person contracting the disease.
14. That decision did not impose a limit on the damages which could be recovered from those responsible for the exposure to asbestos. But it did mean that the risk of any of them being insolvent and unable to pay the appropriate share would fall on the claimant, and that in practice the claimant would have to trace all relevant defendants, as far as this was possible, before liability could be apportioned and full compensation paid, or alternatively to issue multiple claims to recover damages on a piecemeal basis. The practical effects of this decision (which their Lordships were not asked to consider) were that claims could take much longer to be concluded, and would be much more difficult and time-consuming for claimants in circumstances where they and their families are already under considerable pain and stress. The Act reverses the effects of the *Barker* judgment to enable claimants, or their estate or dependants, to recover full compensation from any liable person. It will then be open to the person who has paid the compensation to seek a contribution from other negligent persons.
15. The Act also confers a power for HM Treasury to make provisions that would facilitate the speeding up of payment of claims to mesothelioma victims. These provisions would enable responsible persons to claim money back from the Financial Services Compensation Scheme in specified circumstances (that is, in circumstances in which previously only the claimant would have had such a right), when another responsible person and their insurer are both insolvent and thus unable to pay their own share of compensation payments.