

[Rights of Relatives to Damages \(Mesothelioma\) \(Scotland\) Bill](#)

Bill Number: SP Bill 75
Introduced on: 27 September 2006
Introduced by: Cathy Jamieson (Executive bill)
Passed: 21 March 2007
Royal Assent: 26 April 2007

[2007 asp 18](#)

Passage of the Bill

The [Rights of Relatives to Damages \(Mesothelioma\) \(Scotland\) Bill](#) [SP Bill 75] was introduced on 27 September 2006 by the Minister for Justice. Stage 1 commenced on 29 November 2006 with the Justice 1 Committee as lead committee. The Stage 1 debate took place on [1 February 2007](#) and Stage 2 was taken by the Justice 1 Committee on 21 February 2007. Stage 3 of the Bill took place on [21 March 2007](#) and the Bill was passed without division.

Purpose and objectives of the Bill

The Bill aims to amend the law of damages concerning the right of relatives of a deceased person to claim damages in respect of the deceased's death from mesothelioma (lung cancer caused by exposure to asbestos). The Bill will allow defined relatives of the deceased to claim non-financial damages even if the deceased made a successful claim during his or her lifetime.

Provisions of the Bill

The Bill will rectify the current position under the Damages (Scotland) Act 1976, in which a claim made by a deceased person during their lifetime, extinguishes the availability of a claim by their relatives.

Liability under the Bill is limited to damages under s1(4) of the 1976 Act, that is to non-patrimonial loss (damages for pain and suffering, loss of society, etc.). Under the Bill, where the deceased made a claim for pain and suffering during their lifetime, this will no longer bar the deceased's relatives from making a claim.

The usual limitation period of three years will apply, which means that relatives must bring their claim within three years of the death of the deceased.

Although 'relative' is defined in Schedule 1 of the 1976 Act, it was amended by section 35 of the [Family Law \(Scotland\) Act 2006](#) (asp 2) and is reflected in the definition of 'relative' in the [Human Tissue \(Scotland\) Act 2006](#) (asp 4). For deaths on or after 4 May 2006 the definition of "immediate family" includes spouses or civil partners, cohabitants, parents and children, persons accepted as children, siblings and grandparents or grandchildren.

Parliamentary consideration

Committee discussion at Stage 1 was primarily devoted to the dilemma faced by mesothelioma sufferers: whether to claim while alive or to allow their relatives to claim after their death. It was felt that it was this dilemma which justified the legislation (see Justice 1 Committee [Stage 1 Report](#)). It was also felt that because mesothelioma is a condition caused exclusively as a result of exposure to asbestos, it would not be appropriate to include in the Bill a ministerial power to extend its provisions to other medical conditions.

The policy intention of the Scottish Executive was that the provisions in the Bill should apply only where application for recovery is made on or after the Bill comes into force - that is on or after seven days following Royal Assent. In this way, the provisions of the Bill will not apply those claims already settled at the date of commencement of the Bill. The Bill is retrospective only in the sense that its provisions will apply to cases already going through the courts.

At Stage 1, the Deputy Minister for Justice, Johann Lamont MSP, undertook to make the provisions of the Bill retrospective to some extent (see official report [13 December 2006](#)). Amendments were successfully brought at Stage 2, such that the Bill's provisions will apply to any case in which the sufferer recovers damages or obtains a full settlement on or after 20 December 2006. In those circumstances, their relatives will not be barred from also making a claim for non-patrimonial damages. This provision will give certainty to those who have claims pending, as well as to the insurance industry.

The Stage 3 debate took place on 21 March 2007, there were no amendments and the Bill was passed without division.