

RIGHTS OF RELATIVES TO DAMAGES (MESOTHELIOMA) (SCOTLAND) BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

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1. As required under Rule 9.7.8A of the Parliament's Standing Orders, these revised Explanatory Notes are published to accompany the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill as amended at Stage 2.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the amended Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

THE BILL

4. Section 1 of the Damages (Scotland) Act 1976 (the 1976 Act) confers on the relatives of people who die as the result of a wrongful act certain rights to damages. Those relatives listed in Schedule 1 to the Act may claim under subsection (3) for loss of support and funeral expenses. Immediate family may also claim under subsection (4) for distress, grief and loss of society. These claims are separate from the deceased's own claims for damages. But subsection (2) of that section provides that there shall be no liability to relatives of a deceased person where that person's claim has been settled, or damages have been awarded, prior to death. Currently, mesothelioma sufferers face the dilemma of either pursuing their damages claim while still alive or not pursuing their claim before death so that their executor and relatives can claim awards which total more than the award of damages the sufferer would have been entitled to. Most sufferers are foregoing the compensation which would provide some comfort for them before they die in order to help their families.

5. The Bill will disapply section 1(2) of the 1976 Act so as to allow the immediate family of a mesothelioma sufferer to claim damages for distress, grief and loss of society under section 1(4) of the Act after the sufferer's death irrespective of whether the deceased has already recovered damages or obtained a settlement. The new provision will apply, from the date the Bill comes into force, to cases where the sufferer recovers (or recovered) damages or obtains (or obtained) a settlement on or after 20 December 2006. The immediate family will have the normal limitation period of three years after the death of the sufferer in which to make their claim (unless the sufferer dies after 20 December 2006 and before the Bill comes into force; in such an event the immediate family will only be able to make their claim from the date the Bill commences).

Section 1 – Rights of relatives of a deceased person to damages

6. This section amends section 1 of the 1976 Act. At present, section 1(2) of the 1976 Act prevents the deceased's immediate family from claiming damages for distress, grief and loss of society under section 1(4) of the 1976 Act where the deceased has settled his or her own claim while still alive. This amendment provides at section 1(2) of the Bill for an exception to this rule. The amendment at section 1(3) inserts new subsections (2A) and (2B) which set out the parameters of the exception. Paragraph (b) of new subsection (2B) provides that where a mesothelioma sufferer settles his or her claim, or recovers damages, on or after 20 December 2006, the relatives have a right to damages under section 1(4) of the 1976 Act following his or her death. This right is exercisable after commencement. The transitional provision at section 1(4) of the Bill provides that where a mesothelioma sufferer settles his or her claim, or recovers damages, on or after 20 December 2006 and dies before commencement, the rights of any relative who dies after the sufferer but before commencement are taken to have vested, for the purpose of section 1A of the 1976 Act, in the relative on the deceased's death. This means that the rights transfer to the relative's executor.

Section 2 – Short title and commencement

7. This section gives the short title of the Bill and provides that the Bill will come into force on the day after Royal Assent.

This document relates to the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill as amended at Stage 2 (SP Bill 75A)

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(MESOTHELIOMA) (SCOTLAND) BILL**
[AS AMENDED AT STAGE 2]

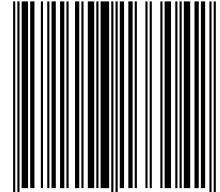
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