Passage of the Bill

The Damages (Scotland) Bill [SP Bill 49] was introduced in the Parliament on 1 June 2010. Stage 1 commenced on 7 September 2010 with the Justice Committee as the lead committee. The Stage 1 (general principles) debate took place on 15 December 2010 and the Bill was passed following the Stage 3 parliamentary debate on 3 March 2011.

Purpose and objectives of the Bill

The Bill is based on a report of the Scottish Law Commission and contains provisions which seek to consolidate and reform the law on damages for wrongful death, i.e. damages in situations where someone is dying or has died from personal injuries caused by the wrongful act or omission of another person.

Provisions of the Bill

Whilst much of the Bill will result in a consolidation of the existing law, when enacted it will also make a number of substantive changes to the existing law. Two major changes are summarised in the paragraphs below.

In the first place, in relation to the victim’s claim for damages, the Bill provides for changes to the way the victim’s claim for future patrimonial loss (i.e. future economic loss) is calculated. At present, the approach usually adopted by the courts is to make a deduction from the victim’s projected future income for his or her reasonable living expenses over the period the victim would have lived (but for his or her injuries), with this latter figure being calculated on a case-by-case basis. However, the Bill provides that the victim’s reasonable living expenses should be presumed to be 25% of the victim’s projected future net...
income, although this can be departed from “for the purpose of avoiding a manifestly and materially unfair result” (section 1).

The Bill when enacted will also make changes to the way the relatives’ claim for loss of financial support is calculated. At present, where the relative making the claim is the deceased’s spouse, civil partner, cohabitant or his or her dependent child, loss of support is usually calculated by reference to a formula laid down in the case of Brown v Ferguson but this formula is thought to be outdated, particular in relation to its effect on the dual income family. In respect of the relatives’ claim for loss of financial support, the Bill provides instead that where the relative making the claim is the deceased’s spouse, civil partner, cohabitant or dependent child, it should be assumed that the deceased used 75% of his or her net income to support his or her family. Again, this figure can be departed from “for the purpose of avoiding a manifestly and materially unfair result” (section 7).

**Parliamentary consideration**

At Stage 1 the Justice Committee, whilst approving the general principles of the Bill, expressed concern over several aspects of the Bill as introduced.

In the Bill as introduced it was not possible to depart from the figure of 25% in the context of the victim’s claim for damages, nor was it possible to depart from the figure of 75% in relation to the relatives’ claim for loss of financial support. The Committee recommended an approach allowing for flexibility to deal with unusual sets of circumstances and this recommendation was reflected in amendments to the Bill passed at Stage 2.

The Committee also did not approve of the provision in the Bill as introduced to restrict the categories of relative who can claim damages for patrimonial loss and amendments passed at Stage 2 removed this proposed change from the Bill.

The Bill as introduced also stated that, in the context of the relatives’ claim for non-patrimonial losses, such as grief and sorrow, mental illness caused by the victim’s death should not be compensated for. On the other hand, the Committee recommended that the law should be left in its current state until a decisive court ruling on the issue or separate legislation is introduced on damages for psychiatric injury. An amendment to the Bill passed at Stage 2 adopted the Committee’s recommendation in this regard.