

RIGHTS OF RELATIVES TO DAMAGES (MESOTHELIOMA) (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

3. 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 1976 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. As the law stood prior to the Act, subsection (2) of that section provided that there was no liability to relatives of a deceased person where that person’s claim had been settled, or damages had been awarded, prior to death. This meant that mesothelioma sufferers faced the dilemma of either pursuing their damages claim while still alive or not pursuing their claim before death so that their executor and relatives could claim awards which totalled more than the award of damages the sufferer would have been entitled to. Most sufferers were foregoing the compensation which would have provided some comfort for them before they died in order to help their families.
4. The Act disapplies 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 1976 Act after the sufferer’s death irrespective of whether the deceased has already recovered damages or obtained a settlement. The new provision applies, from the date the Act came 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 have the normal limitation period of three years after the death of the sufferer in which to make their claim (unless the sufferer died after 20 December 2006 and before the Act came into force; in such an event the immediate family have only been able to make their claim from the date the Act came into force).

Section 1 – Mesothelioma: rights of relatives of a deceased person to damages

5. This section amends section 1 of the 1976 Act. Previously, section 1(2) of the 1976 Act prevented 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 Act 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 Act 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.

*These notes relate to the Rights of Relatives to Damages (Mesothelioma)
(Scotland) Act 2007 (asp 18) which received Royal Assent on 26 April 2007*

Section 2 – Short title and commencement

6. This section gives the short title of the Act and provides that the Act comes into force on the day after Royal Assent.