

*These notes relate to the Damages (Asbestos-related Conditions)
(Scotland) Act 2009 (asp 4) which received Royal Assent on 17 April 2009*

DAMAGES (ASBESTOS-RELATED CONDITIONS) (SCOTLAND) ACT 2009

EXPLANATORY NOTES

THE ACT

Section 1 – Pleural plaques

5. This section addresses the central reasoning of the judgment in *Johnston* by providing that asbestos-related pleural plaques are an actionable personal injury. Subsections (1) and (2) provide that pleural plaques are a non-negligible personal injury which constitutes actionable harm in respect of which an action for damages may be raised and for which, if the action is successful, damages may be recovered. In other words, pleural plaques are material damage that is not *de minimis* for the purposes of a claim for delictual damages. Subsection (3) disapplies any rule of law, such as the common law principles referred to in the *Johnston* judgment, to the extent that their application would result in pleural plaques being considered non-actionable. Subsection (4) ensures that section 1 does not otherwise affect the operation of statutory or common law rules for determining delictual liability.