

*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 2 – Pleural thickening and asbestosis

6. This section makes provision against the possibility that the ruling in *Johnston* may be applied in relation to asymptomatic pleural thickening and asbestosis (because the courts may consider that the *ratio* (principles of law underlying and justifying the decision) in *Johnston* provides authority in these cases). Subsections (1), (2) and (3) provide that asbestos-related pleural thickening and asbestosis, which have not and are not causing physical impairment, are a non-negligible personal injury i.e. the condition constitutes actionable harm for the purposes of raising a claim for delictual damages. In subsection (1) the phrase “for the avoidance of doubt” is used because there is, in fact, no authoritative decision to the effect that asymptomatic pleural thickening and asbestosis are *not* actionable. Subsections (4) and (5) are consistent with subsections (3) and (4) of section 1. Subsection (4) 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 asymptomatic pleural thickening or asbestosis being considered non-actionable. Subsection (5) ensures that section 2 does not otherwise affect the operation of statutory or common law rules for determining delictual liability.