

DAMAGES (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5: Discharge of liability to pay damages: exception for mesothelioma

35. Section 5 re-enacts subsections (2A) and (2B) of section 1 of the 1976 Act which were inserted by the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (“the 2007 Act”).
36. It forms an exception, in cases where a victim dies of mesothelioma, to the general principle laid down in section 4(2) that the defender B is not liable to pay damages to the deceased’s (A’s) relatives where A has discharged or excluded liability before A’s death.
37. Subsection (1) contains three criteria which must be met for section 5 to apply.
38. Paragraph (a) provides that A must have discharged B’s liability to A before death.
39. Paragraph (b) provides that the personal injury from which A dies must be mesothelioma.
40. Paragraph (c) provides that both the discharge and the death must have taken place on or after 20 December 2006. This was the date specified in the 2007 Act as the date from which the exception would apply.
41. Subsection (2) provides that, where the three criteria set out in subsection (1) are met, B will be liable in damages to A’s relatives even though A had discharged the liability before A’s death. However, B’s liability is limited to damages for non-patrimonial loss; A’s relatives may seek an award in terms of section 4(3)(b) but not damages for loss of support under section 4(3)(a).