

DAMAGES (SCOTLAND) ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9: Transmission of relative's rights to executor

58. **Section 9** re-enacts section 1A of the 1976 Act.
59. Subsection (1) provides that section 9 applies where a relative (“R”) who has a right to damages under section 4 or 6 dies before that claim can be resolved.
60. Subsection (2) provides that any right to damages under section 4 or 6 that was vested in R immediately before R’s death, will transmit to the relative’s executor (“E”). However, the executor can only pursue the claim for damages up to R’s date of death. Damages are not payable for future loss as R’s death would have brought to an end the support that R received in any case. Similarly, the grief and suffering felt by R is taken to end with R’s death.
61. Subsection (3) re-enacts section 1(4) of the 2007 Act. It makes special provision for transitional cases involving the relatives of mesothelioma sufferers. The 2007 Act came into force on 27 April 2007. However, the exception that it introduced (see commentary on section 5 above) was intended to apply where both the victim’s discharge of liability and the victim’s death occurred on or after 20 December 2006. As a result, the 2007 Act contained a transitional provision at section 1(4). Section 1(4) provides that, where R would have had rights to damages but died in the period between the victim’s death and the coming into force of the Act, the rights in question were to be taken to have vested in R as at the victim’s date of death. In this way, the rights would be deemed to have vested in R before R’s death and accordingly they could transmit to R’s executor. Subsection (3) re-enacts this provision because there could still be cases where such a deceased relative’s executor had not yet raised an action for damages.