



# Damages (Scotland) Act 2011

## 2011 asp 7

### **1 Damages to injured person whose expectation of life is diminished**

- (1) This section applies to an action for damages in respect of personal injuries suffered by a pursuer whose date of death is expected to be earlier than had the injuries not been suffered.
- (2) In assessing the amount of damages by way of solatium the court is, if the pursuer—
  - (a) was at any time,
  - (b) is, or
  - (c) is likely to become,aware of the reduced expectation of life, to have regard to the extent to which the pursuer, in consequence of that awareness, has suffered or is likely to suffer.
- (3) Subject to subsection (2), no damages by way of solatium are recoverable by the pursuer in respect of loss of expectation of life.
- (4) In making an award of damages by way of solatium, the court is not required to ascribe specifically any part of the award to loss of expectation of life.
- (5) In assessing the amount of any patrimonial loss in respect of the period after the date of decree the court is to assume that the pursuer will live until the date when death would have been expected had the injuries not been suffered (the “notional date of death”).
- (6) Such part of that amount as is attributable to the period between the expected date of death and the notional date of death (the “lost period”) is to be assessed as follows—
  - (a) the court is to estimate what (if anything) the pursuer would have earned during the lost period through the pursuer’s own labour or own gainful activity had the injuries not been suffered,
  - (b) the court may, if it thinks fit, add to the amount so estimated (whether or not that amount is nil) an amount equivalent to all or part of what it estimates the pursuer would have received by way of relevant benefits during the lost period had the injuries not been suffered, and
  - (c) the court is then to deduct, from the total amount obtained by virtue of paragraphs (a) and (b), 25% of that amount (to represent what would have been the pursuer’s living expenses during the lost period had the injuries not been suffered).

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*Status: This is the original version (as it was originally enacted).*

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- (7) But, if satisfied that it is necessary to do so for the purpose of avoiding a manifestly and materially unfair result, the court may apply a different percentage to that specified in subsection (6)(c).
- (8) In paragraph (b) of subsection (6), “relevant benefits” means benefits in money or money’s worth other than benefits—
- (a) derived from the pursuer’s own estate, or
  - (b) consisting of such earnings as are mentioned in paragraph (a) of that subsection.