Damages (Scotland) Bill

[AS INTRODUCED]

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THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED: Explanatory Notes (SP Bill 3-EN), a Financial Memorandum (SP Bill 3-FM), a Policy Memorandum (SP Bill 3-PM), a Delegated Powers Memorandum (SP Bill 3-DPM) and statements on legislative competence (SP Bill 3-LC).

Damages (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the law in relation to damages for personal injuries and damages awarded to children; and for connected purposes.

Amendments of Prescription and Limitation (Scotland) Act 1973

1 Actions where damages claimed are for certain injuries attributable to asbestos exposure

(1) The Prescription and Limitation (Scotland) Act 1973 is amended as follows.

(2) After section 17, insert—

"17ZA Actions where damages claimed are for certain injuries attributable to asbestos exposure

(1) This section makes further provision about the application of section 17 in relation to an action of damages where the damages claimed consist solely of damages in respect of an injury that—

(a) is wholly or partly attributable to exposure to asbestos, and

(b) has caused or is causing impairment of the injured person's physical condition.

(2) The reference in section 17(2)(b)(i) to the injuries in question is to be read as referring only to injuries which have caused, or are causing, impairment of the injured person's physical condition.

(3) Accordingly, that reference does not include reference to—

(a) asbestos-related pleural plaques,

(b) the following injuries, provided the injury has not caused, and is not causing, impairment of the injured person's physical condition—

(i) asbestos-related pleural thickening,

(ii) asbestosis.

(4) Subsection (5) applies where—

(a) the reference in section 17(2)(b)(i) to the injuries in question includes reference to one of the following injuries—

(i) asbestos-related pleural thickening,

(ii) asbestosis, and

(b) the fact that the injured person has the injury was recognised at a time when it had not yet caused, and was not causing, impairment of the person's physical condition.

(5) It is to be taken to have been impossible to be aware of the fact mentioned in section 17(2)(b)(i) in relation to the injury until the point at which a registered medical practitioner informed the injured person that the injury had caused, or had begun causing, impairment of the person's physical condition.

(6) It does not matter for the purposes of subsection (4)(b) whether or not the injured person was informed that the person had the injury.

(7) This section applies in relation to an action—

(a) commenced on or after the day on which this section comes into force regardless of whether the right of action accrued before, on or after that day,

(b) commenced before the day on which this section comes into force if the action has not been finally disposed of before that day.

(8) For the purposes of this section, an action is finally disposed of—

(a) when a decision disposing of the action is made, if there is no right of appeal against the decision,

(b) if there is a right of appeal with leave or permission against such a decision—

(i) when the time period for seeking leave or permission to appeal has expired without an application for leave or permission having been made, or

(ii) when leave or permission to appeal is refused,

(c) if leave or permission to appeal against such a decision has been granted or is not required, when the time period for making an appeal has expired without an appeal having been made, or

(d) when the action is withdrawn or abandoned.

(9) In subsection (8), the reference to a decision disposing of the action includes a reference to a decision made in an appeal against an earlier decision.".

(3) After section 18, insert—

"18ZZA Actions where damages claimed are for certain injuries or death attributable to asbestos exposure

(1) This section makes further provision about the application of section 18 in relation to an action of damages where—

(a) the deceased person died, before the day on which this section comes into force, from a personal injury that is wholly or partly attributable to exposure to asbestos, and

(b) leaving aside the possibility of the bringing of an action of damages in respect of the injury or death being allowed by virtue of section 19A, the bringing of such an action is (ignoring this section) prevented by section 18(4).

(2) Section 18(4) does not prevent the action being brought if it would have been possible, by virtue of section 17ZA, for an action—

(a) to which section 17 applied, and

(b) in which the damages claimed consisted solely of damages in respect of the injury from which the person died,

to be brought by or on behalf of the person, if alive, on the day on which section 17ZA came into force.

(3) This section applies in relation to an action commenced before the day on which this section comes into force if the action has not been finally disposed of before that day (as well as in relation to actions commenced on or after that day).

(4) An action is finally disposed of for the purposes of this section if it would be finally disposed of for the purposes of section 17ZA.".

Amendments of Administration of Justice Act 1982

2 Liability to pay damages for services rendered by persons other than relatives

(1) Section 8 of the Administration of Justice Act 1982 (services rendered to injured person) is amended as follows.

(2) In subsection (1)—

(a) for "a relative" substitute "another individual",

(b) for the second "relative" substitute "individual".

(3) In subsection (2), for "relative" substitute "individual".

(4) In subsection (3)—

(a) for "a relative" substitute "another individual",

(b) for the second "relative" substitute "individual".

(5) After subsection (3), insert—

"(3A) The responsible person is not liable as mentioned in subsection (1) or (3) in respect of services rendered if the services are rendered (either or both)—

(a) by a person who has a contractual right to payment in respect of the rendering of the services, or

(b) in the course of an individual's business, profession or vocation.".

(6) In subsection (4), for "relative" substitute "other individual mentioned in subsection (1) or, as the case may be, (3)".

3 Payments made under insurance arranged by injured person's employer

(1) Section 10 of the Administration of Justice Act 1982 (assessment of damages for personal injuries) is amended as follows.

(2) The existing text becomes subsection (1).

(3) After that subsection, insert—

"(2) The following are to be regarded as a contractual benefit for the purposes of subsection (1)(a) only if a condition set out in subsection (4) is satisfied—

(a) any sum paid or payable to the injured person under a qualifying insurance arrangement,

(b) any sum paid to the injured person by the injured person's employer the cost of which has been recovered or is recoverable by the employer under a qualifying insurance arrangement.

(3) Otherwise, such sums are to be regarded as remuneration or earnings for the purposes of subsection (1)(i).

(4) The conditions are that—

(a) the injured person required to make any payment in order for the qualifying insurance arrangement to apply in relation to the injured person,

(b) the injured person chose to forgo additional remuneration or earnings in respect of the injured person's employment with the employer in order for the qualifying insurance arrangement to apply (or apply in a particular way) in relation to the injured person, or

(c) the qualifying insurance arrangement applying in relation to the injured person caused an increase in the amount of a payment of a type which would anyway require to be paid by the injured person (whether directly or by the amount due being deducted by the injured person's employer from the injured person's remuneration or earnings for onward transmission to the person to whom the payment is due).

(5) It does not matter for the purposes of subsection (4)(a) or (c) whether or not the injured person had a choice as to whether the qualifying insurance arrangement applied in relation to the injured person.

(6) An arrangement is a "qualifying insurance arrangement" for the purposes of subsections (2) to (4) if—

(a) it is a contractual arrangement between an injured person's employer and another person, and

(b) the arrangement provides for that other person to make any payment to the employer or the injured person in consequence of the injured person (in circumstances covered by the arrangement) being absent from, or ceasing, the injured person's employment with the employer.".

4 Expenses relating to medical treatment, care, accommodation and equipment

(1) After section 10 of the Administration of Justice Act 1982, insert—

"10A Expenses relating to medical treatment, care, accommodation and equipment

In an action for damages for personal injuries (including any such action arising out of a contract), the following possibilities are to be disregarded in determining the reasonableness of any expenses—

(a) the possibility of avoiding those expenses or part of them by taking advantage of—

(i) facilities available under—

(A) the National Health Service (Scotland) Act 1978,

(B) the National Health Service Act 2006, or

(C) the National Health Service (Wales) Act 2006, or

(ii) any corresponding facilities in Northern Ireland,

(b) where the expenses relate to the provision of care, accommodation or equipment for the injured person, any possibility of avoiding those expenses or part of them through the exercise, in relation to the injured person, of any function of a public authority.".

(2) Section 2 of the Law Reform (Personal Injuries) Act 1948 (measure of damages) is repealed.

5 Meaning of "relative"

(1) Section 13(1) of the Administration of Justice Act 1982 (damages for personal injuries etc.) is amended as follows.

(2) In the definition of "relative"—

(a) in the opening words, after "means" insert "a person who",

(b) in paragraph (a)—

(i) at the beginning, insert "is",

(ii) after the second "spouse", insert "of the injured person",

(c) in paragraph (aa)—

(i) at the beginning, insert "is",

(ii) after the second "partner", insert "of the injured person",

(d) for paragraphs (b) to (e) substitute—

"(b) not being the spouse or civil partner of the injured person, is living or has lived with the injured person as if married to the injured person,

(bb) is a parent or child of the injured person, accepts the injured person as a child of the person's family, or is accepted by the injured person as a child of the injured person's family,

(bc) is the sibling of the injured person or has been brought up in the same household as the injured person and accepted as a child of the family in which the injured person was a child,

(bd) is a grandparent or grandchild of the injured person, accepts the injured person as a grandchild of the person, or is accepted by the injured person as a grandchild of the injured person,

(c) is an ascendant or descendant of the injured person (other than a parent or grandparent or a child or grandchild of the injured person),

(ca) is a sibling of a parent of the injured person,

(cb) is a child or other issue of—

(i) a sibling of the injured person, or

(ii) a sibling of a parent of the injured person.".

Amendments of Children (Scotland) Act 1995

6 Duty to consider how damages payable to children will be managed

In section 13 of the Children (Scotland) Act 1995 (awards of damages to children), for subsection (1) substitute—

"(A1) This section applies where in any court proceedings a sum of money becomes payable to, or for the benefit of, a child under the age of 16 years.

(A2) Except where the money is an interim payment, the court must—

(a) consider a written proposal made by or on behalf of the child about how the money is to be invested, applied or otherwise dealt with for the benefit of the child, and

(b) having regard to the matters mentioned in subsection (A3), either—

(i) remit the question of the suitability of the proposal to the Accountant of Court, or

(ii) explain in writing its reasons for not doing so.

(A3) The matters are—

(a) the sum of money involved,

(b) whether the money is intended to be used to provide for the child's care and accommodation needs and, if so, for how long,

(c) where the proposal states that the money will be held by a trust—

(i) the terms of the trust deed under which the trust is, or is proposed to be, constituted, and

(ii) the identity and qualifications of the trustees.

(1) The court may make any order relating to the payment and management of the money for the benefit of the child as it thinks fit.".

7 Application of certain duties in cases involving awards of damages to children

In section 13 of the Children (Scotland) Act 1995 (awards of damages to children), after subsection (3), insert—

"(4) Sections 11ZA and 11ZB apply in relation to subsections (A2) and (1) as they apply in relation to section 11(1).".

Amendments of Damages Act 1996

8 Periodical payment orders: statutory basis of alteration for inflation

(1) Section 2D of the Damages Act 1996 (as inserted by section 3(2) of the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019) (index-linking of amount of periodical payments) is amended as follows.

(2) In subsection (6)—

(a) for paragraph (a), substitute—

"(a) the all items consumer prices index published by the Statistics Board ("the consumer prices index"),",

(b) in paragraph (b), for "retail", substitute "consumer".

(3) After subsection (6), insert—

"(6A) The Scottish Ministers may by regulations provide that the rate of inflation is to be increased or decreased by a number of percentage points prescribed in the regulations.

(6B) A number prescribed in regulations under subsection (6A) may be a whole number, or may comprise or incorporate a decimal fraction.

(6C) In subsection (6A), "the rate of inflation" means the annual percentage change in the index or information to which reference must be had under subsection (6) for the purpose of altering the amount of periodical payments on the statutory basis under subsection (1)(b).".

(4) In subsection (7)—

(a) in the opening words, after "(6)(b)" insert "or (6A)",

(b) for paragraph (a), substitute—

"(a) may—

(i) make different provision for different circumstances,

(ii) make incidental, supplementary, consequential, transitional, transitory or saving provision,

(iii) modify any enactment, including an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,".

9 Assumed rate of return on damages invested: allowance for inflation

(1) Paragraph 9 of schedule B1 of the Damages Act 1996 (assumed rate of return on damages invested) is amended as follows.

(2) In sub-paragraph (2)—

(a) for paragraph (a), substitute—

"(a) the all items consumer prices index published by the Statistics Board ("the consumer prices index"),",

(b) in paragraph (b), for "retail", substitute "consumer".

(3) After sub-paragraph (2), insert—

"(3) The Scottish Ministers may by regulations provide that the rate-assessor must increase or decrease the rate of inflation by a number of percentage points prescribed in the regulations.

(4) A number prescribed in regulations under sub-paragraph (3) may be a whole number, or may comprise or incorporate a decimal fraction.

(5) In sub-paragraph (3), "the rate of inflation" means the annual percentage change in the index or information to which the rate-assessor must have reference under sub-paragraph (2) for the purpose of making the allowance under sub-paragraph (1).".

Final provisions

10 Ancillary provision

(1) The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

(2) Regulations under this section may—

(a) make different provision for different purposes,

(b) modify any enactment (including this Act).

(3) Regulations under this section—

(a) are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act, and

(b) are otherwise subject to the negative procedure.

11 Commencement

(1) The following provisions come into force on the day after Royal Assent: this section and sections 10 and 12.

(2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

(3) Regulations under this section may—

(a) make different provision for different purposes,

(b) include transitional, transitory or saving provision.

12 Short title

The short title of this Act is the Damages (Scotland) Act 2027.

Damages (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to amend the law in relation to damages for personal injuries and damages awarded to children; and for connected purposes.

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