



# Scottish Law Commission

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ISSUED ON BEHALF OF THE SCOTTISH LAW COMMISSION

NOT FOR PUBLICATION OR BROADCAST

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## TITLE TO SUE FOR NON-PATRIMONIAL LOSS

In a discussion paper published today, the Commission reviews the current statutory list of relatives of a deceased who can claim damages for non-patrimonial loss in respect of the death, and invites comments on possible amendments to the list.

## Background

Where a person dies as a consequence of injuries sustained as a result of another person's delictual conduct, the deceased's family may be entitled to claim damages under the Damages (Scotland) Act 1976.

In order to be able to sue, the pursuer must be a relative of the deceased as defined in Schedule 1 to the 1976 Act. The relative's claim is usually for compensation for loss of financial support (patrimonial loss). A smaller group of relatives – the deceased's "immediate family" - is entitled to claim damages for non-patrimonial loss. Under the 1976 Act, non-patrimonial damages are intended to provide compensation for the distress and anxiety suffered by the relative in contemplation of the suffering of the deceased before his death, for grief and sorrow suffered by the relative as a result of the deceased's death and the loss of such benefit as the relative might have been expected to derive from the deceased's society and guidance if the deceased had not died.

The deceased's "immediate family" consists of the deceased's spouse, heterosexual cohabitant, children and parents. The deceased's mother-in-law and father-in-law are also included. However, the "immediate family" does not include the deceased's brothers, sisters, half-brothers, half-sisters, aunts, uncles, nieces and nephews, grandparents or grandchildren. As a consequence, these relatives cannot claim non-patrimonial damages. Also excluded are the deceased's brother-in-law and sister-in-law, although they can claim damages for patrimonial loss. The deceased's homosexual cohabitant and a person who was engaged to be married to the deceased are also excluded from the list.

There has been growing disquiet about the provisions of the 1976 Act in relation to the people who are entitled to claim non-patrimonial damages. Concern has been expressed in particular that the list of relatives does not include brothers and sisters of the deceased. There has been a number of cases in which the provisions of the 1976 Act have been criticised, notably in *Monteith v Cape Insulation* (1999 SLT 116) in which the court suggested that the law needed clarification. It is for that reason that Scottish Ministers have asked the Commission to examine the provisions of the 1976 Act and to make recommendations as to possible changes in this area of the law.

The discussion paper does not put forward proposals as to how the list of relatives entitled to claim non-patrimonial damages should be amended. Rather, it invites comments on a list of questions designed to obtain views as to the relatives and others who should have title to sue for non-patrimonial damages.

The Commission invites comments on the discussion paper by Friday 30 November 2001. The full text of the discussion paper is available on the Commission's Website: [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk)

## NOTES TO EDITORS

1. The Scottish Law Commission was set up in 1965 to promote the reform of the law of Scotland. The Chairman is the Honourable Lord Gill. The other Commissioners are currently Mr Patrick S Hodge QC, Professor Gerard Maher, Professor Kenneth G C Reid and Professor Joseph M Thomson.

2. Further information can be obtained by contacting Mrs Susan Sutherland Scottish Law Commission, 140 Causewayside, Edinburgh EH9 1PR (Tel: 0131 668 2131, Fax: 0131 662 4900, e-mail: [info@scotlawcom.gov.uk](mailto:info@scotlawcom.gov.uk).)

3. The paper may be viewed on our website at [www.scotlawcom.gov.uk](http://www.scotlawcom.gov.uk) or purchased from The Stationery Office Bookshops.