

SCOTTISH LAW COMMISSION
(Scot Law Com No 187)



Report on Title to Sue for Non-Patrimonial Loss

Report on a reference under section 3(1)(e) of the Law Commissions Act 1965

Laid before the Scottish Parliament by the Scottish Ministers

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965¹ for the purpose of promoting the reform of the law of Scotland. The Commissioners are:

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¹ Amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999 (S.I. 1999/1820).

SCOTTISH LAW COMMISSION

Report on a reference under section 3(1)(e) of the Law Commissions Act 1965

Report on Title to Sue for Non-Patrimonial Loss

To: Jim Wallace Esq QC MSP, Deputy First Minister and Minister for Justice

We have the honour to submit to the Scottish Ministers our Report on Title to Sue for Non-Patrimonial Loss

(Signed) RONALD D MACKAY, *Chairman*

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Contents

	<i>Paragraph</i>	<i>Page</i>
PART 1 - INTRODUCTION		
Terms of reference	1.1	1
The scheme of the Damages (Scotland) Act 1976	1.5	1
Patrimonial loss	1.6	1
Non-patrimonial loss	1.7	2
Structure of the report	1.11	3
Legislative competence	1.12	3
PART 2 - RECOMMENDATIONS FOR REFORM		
Introduction	2.1	4
Background	2.4	4
Judicial discretion	2.7	5
Policy aims	2.11	6
The present members of the deceased's immediate family	2.12	7
Surviving spouse	2.13	7
Surviving opposite-sex cohabitants	2.16	8
Parents	2.21	9
Parental rights and responsibilities	2.22	9
Biological parents of a child	2.24	10
Adoptive parents of a child	2.25	10
Biological parents of an adopted child	2.26	10
Parents-in-law	2.33	11
Step-parents	2.36	12
Children	2.42	13
Expanding the concept of the deceased's immediate family	2.48	14
Brothers and sisters	2.49	15
Brothers-in-law and sisters-in-law	2.51	15
<i>De facto</i> brothers and sisters	2.52	16
Grandparents and grandchildren	2.55	16
Same-sex cohabitants	2.57	17
Other relationships	2.66	19
Former spouse	2.67	19
Engaged couples	2.69	19
Uncles and aunts	2.76	21
Nieces, nephews and cousins	2.78	21
<i>De facto</i> grandparents and grandchildren	2.79	21
Application and commencement	2.82	22

PART 3 - LIST OF RECOMMENDATIONS	23
APPENDIX A	
Draft Damages (Scotland) Bill 2002	26
APPENDIX B	
Title to sue for non-patrimonial loss under the Damages (Scotland) Act 1976 at present and following our Bill	32
APPENDIX C	
List of consultees who submitted written comments on Discussion Paper No 116	33

Part 1 Introduction

Terms of reference

1.1 On 22 March 2001 we received the following reference from Scottish Ministers:

"To consider the provisions of the Damages (Scotland) Act 1976¹ that set out which relatives of a deceased person can claim non-patrimonial damages; and to make recommendations as to possible changes in the law."

1.2 Our remit is limited in that we have not been asked to consider possible changes to the law in relation to title to sue for patrimonial damages under the 1976 Act. However, in Part 2 of this report we explain why the effect of some of our recommendations would be to amend the 1976 Act in relation to patrimonial damages as well as non-patrimonial damages.

1.3 In October 2001 we published our Discussion Paper on *Title to Sue for Non-Patrimonial Loss*.² There we referred to the cases of *Quinn v Reed*³ and *Monteith v Cape Insulation*⁴ in which the court criticised the provisions of the 1976 Act relating to damages for non-patrimonial loss. In view of the sensitivity of some of the issues, we departed from our usual practice of making proposals for reform. Instead, we invited consultees to respond to a number of questions relating to possible changes to the 1976 Act.

1.4 We distributed our discussion paper widely and we are grateful to those consultees who submitted responses.⁵

The scheme of the Damages (Scotland) Act 1976

1.5 The 1976 Act provides that, where a person dies as a result of personal injuries caused by another person's delictual conduct, the deceased's family may be entitled to claim damages under the Act. The Act allows claims for damages under two heads - patrimonial loss (loss of financial support) and non-patrimonial loss (grief, distress, sorrow and other intangible losses).

1.6 *Patrimonial loss*. Under section 1(3) of the 1976 Act relatives of the deceased are entitled to sue for patrimonial loss. In order to sue, the pursuer must be a "relative" of the deceased within the meaning of Schedule 1, paragraph 1(a) to (f) of the Act, as read with paragraph 2 of the Schedule:

"1. In this Act 'relative' in relation to a deceased person includes –

¹ (c 13). Referred to subsequently in this report as "the 1976 Act".

² DP No 116.

³ 1981 SLT (Notes) 117.

⁴ 1998 SC 903.

⁵ Appendix C lists the consultees who submitted responses to the discussion paper.

(a) any person who immediately before the deceased's death was the spouse of the deceased;

(aa) any person, not being the spouse of the deceased, who was, immediately before the deceased's death, living with the deceased as husband or wife;

(b) any person who was a parent or child of the deceased;

(c) any person not falling within paragraph (b) above who was accepted by the deceased as a child of his family;

(d) any person who was an ascendant or descendant (other than a parent or child) of the deceased;

(e) any person who was, or was the issue of, a brother, sister, uncle or aunt of the deceased; and

(f) any person who, having been a spouse of the deceased, had ceased to be so by virtue of a divorce;

but does not include any other person.

2. In deducing any relationship for the purposes of the foregoing paragraph –

(a) any relationship by affinity⁶ shall be treated as a relationship by consanguinity; any relationship of the half blood shall be treated as a relationship of the whole blood; and the step-child of any person shall be treated as his child; and

(b) section 1(1) of the Law Reform (Parent and Child) (Scotland) Act 1986 shall apply; and any reference (however expressed) in this Act to a relative shall be construed accordingly."⁷

1.7 ***Non-patrimonial loss.*** Under section 1(4) of the 1976 Act certain relatives of the deceased – the deceased's "immediate family" within the meaning of section 10(2) of the Act – can claim damages for all or any of the following:

"(a) distress and anxiety endured by the relative in contemplation of the suffering of the deceased before his death;

(b) grief and sorrow of the relative caused by the deceased's death;

(c) the loss of such non-patrimonial benefit as the relative might have been expected to derive from the deceased's society and guidance if the deceased had not died".

1.8 Section 10(2) provides that the deceased's "immediate family" are those relatives falling within paragraphs 1(a), (aa), (b) and (c) of Schedule 1:

"(a) any person who immediately before the deceased's death was the spouse of the deceased;

⁶ A relationship by affinity is one created through marriage. The law assumes that affinity survives the marriage that created it, even if the marriage ends by death or divorce.

⁷ Section 1(1) of the 1986 Act provides that the fact that a person's parents are not or have not been married to one another shall not be taken into account in establishing the relationship between the person and any other person.

(aa) any person, not being the spouse of the deceased, who was, immediately before the deceased's death, living with the deceased as husband or wife;

(b) any person who was a parent or child of the deceased;

(c) any person not falling within paragraph (b) above who was accepted by the deceased as a child of his family;"⁸

1.9 Thus the deceased's immediate family is a sub-set of the deceased's relatives. Members of the immediate family are entitled to sue for patrimonial loss as well as non-patrimonial loss. But not all those relatives who are entitled to sue for patrimonial loss can sue for non-patrimonial loss. Thus title to sue for non-patrimonial loss is inextricably linked with title to sue for patrimonial loss.

1.10 The preliminary view expressed in our discussion paper⁹ was that the basic scheme under the 1976 Act should remain as it is. The results of our consultation have not persuaded us to alter our view.

Structure of the report

1.11 In Part 2 we set out our recommendations for amendments to the 1976 Act. Part 3 contains a list of the recommendations. A draft Bill which would give effect to our recommendations is contained in Appendix A. Appendix B shows the changes in title to sue for non-patrimonial damages if our draft Bill is implemented. A list of consultees who submitted responses to the discussion paper is in Appendix C.

Legislative competence

1.12 The recommendations in this report relate to the law of damages in Scotland. That is not a matter which is reserved to the Westminster Parliament under Schedule 5 to the Scotland Act 1998.¹⁰ We take the view therefore that it would be competent for our draft Bill to be implemented by the Scottish Parliament and the Bill has been drafted accordingly.

1.13 A further aspect of the legislative competence of the Scottish Parliament is that any Act of the Parliament must be compatible with the European Convention on Human Rights.¹¹ We consider that enactment of the recommendations in this report would not be in breach of the Convention.

⁸ Again, paragraph 2 of Schedule 1 applies; see para 1.6 above.

⁹ DP No 116, paras 1.3 and 3.5.

¹⁰ (c 46).

¹¹ Scotland Act 1998, (c 46) ss 29(2)(d), 126(1); Human Rights Act 1998 (c 42) s 1(1).

Part 2 Recommendations for Reform

Introduction

2.1 As we mentioned in Part 1, our terms of reference are relatively narrow.¹ We have been asked to consider the provisions of the 1976 Act which set out which relatives of a deceased person are entitled to claim non-patrimonial damages. We have not been asked to undertake a review of the 1976 Act as a whole. In considering our recommendations for reform, we have had to bear in mind the inherent link which the 1976 Act makes between patrimonial and non-patrimonial damages. We think that the existing scheme of the 1976 Act is correct in making that link. In many cases a relative who has suffered the intangible losses which give rise to a claim for non-patrimonial loss will also have suffered loss of support and should be entitled to claim patrimonial damages.

2.2 We have therefore approached the matter on the basis that this link should be preserved and that the basic structure of the 1976 Act should not be changed. Our approach was supported by many of our consultees who took the view that title to sue for non-patrimonial loss should continue to be restricted to a sub-set of the deceased's relatives known as the immediate family.²

2.3 As a consequence, any person whom we recommend should have title to sue for non-patrimonial loss should also have title to sue for patrimonial loss, even if that person is not entitled to do so at present. We recognise that in this respect some of our recommendations go beyond the strict terms of our remit. However, we consider that this approach is justifiable in order to retain the structure of the 1976 Act.

Background

2.4 It is a fundamental principle of Scots law that delictual liability does not arise in respect of losses indirectly sustained by the pursuer as a result of harm suffered by another person. Thus, for example, if A is injured by B with the result that A cannot fulfil a contract with C, C cannot sue B in delict for the loss he has sustained.³ The 1976 Act is an important exception to this principle in that it allows the deceased's relatives to sue for patrimonial loss suffered as a consequence of a delict which the defender caused to another person, namely the deceased. Title to sue is, however, restricted to those persons who are listed in Schedule 1 to the 1976 Act as relatives of the deceased. The pursuer must show that the deceased had in fact been supporting him (or was likely to support him in the future). In this way, the exception to the general principle of non-liability in delict for secondary economic loss is kept within the narrowest of bounds.

¹ See para 1.1 above.

² DP No 116, question 1(a), para 3.8.

³ *Reavis v Clan Line Steamers Ltd* 1925 SC 725.

2.5 Similarly, while a person who has been injured can receive compensation for pain and suffering (solatium), as a general principle solatium is not awarded to persons who suffer distress as a consequence of the death of or personal injury to a third party.⁴ Thus, for example, if a popular schoolteacher died from personal injuries sustained as a result of the negligence of the defender, her pupils could not sue in delict for the grief and distress they have suffered as a consequence of her death. This is because in Scots law ordinary grief and suffering are not reparable interests.⁵ Grief is a part of normal human experience and as such is not regarded as harm (damnum) for the purposes of the law of delict. As a result, a defender is not faced with indeterminate liability which may be incommensurate with the extent of the wrong. In addition, because liability is not indeterminate, the defender may have been able to obtain insurance at a reasonable premium.

2.6 The 1976 Act also constitutes an important exception to the principle of non-liability for grief and suffering by allowing a small group of persons, the deceased's immediate family, to sue for non-patrimonial losses arising from the death of a relative. The membership of the group is not large⁶ and in most cases the amounts awarded as damages are small.⁷ The extent of the exception is therefore limited and the prospect of the defender's indeterminate liability kept at bay.

Judicial discretion

2.7 In our discussion paper we mentioned the possibility of introducing a system whereby anyone claiming interest could apply to the court to show in the particular circumstances of the case that he or she should be entitled to sue for non-patrimonial loss.⁸ Some consultees indicated that the court should have such discretion. The power would operate to allow a claim for damages for non-patrimonial loss whenever the applicant could show that there was a close tie of love and affection between the applicant and the deceased. As an alternative, some consultees suggested that while the list of the deceased's immediate family - who would automatically have title to sue - should be retained, the court could have a residual discretion. This would allow claims from applicants outwith that group on proof that there was a close tie of love and affection between the deceased and the applicant. We have rejected these options for the following reasons.

2.8 First, we take the view that normal grief and suffering should continue to be regarded as non-reparable interests. However, we recognise that title to sue for damages for non-patrimonial loss under the 1976 Act has an important symbolic role. It recognises that a death arising from personal injuries is not merely a wrong against the deceased but also a wrong against those who have been closest to the deceased. As in the example of the schoolteacher, a person's death may bring grief and sorrow to a large number of people who knew the deceased. Yet they do not suffer the sense of outrage at the wrong experienced by the family of the victim which the 1976 Act recognises by allowing damages for non-patrimonial loss. In our view, those most likely to experience the intangible losses which form the basis of the claim will be close members of the deceased's family. These are persons who, due to their relationship, have loved the deceased or have been emotionally

⁴ See for example *Bourhill v Young* 1942 SC (HL) 78; *Robertson v Turnbull* 1982 SC (HL) 1.

⁵ *Simpson v Imperial Chemical Industries* 1983 SLT 601.

⁶ See para 1.8 above.

⁷ DP No 116, Appendix 2 which sets out examples of awards of damages for non-patrimonial loss.

⁸ DP No 116, para 3.5.

close to the deceased because they were brought up together in the same household. Provided the definition of the deceased's immediate family reflects accurately the family structures in contemporary Scotland, the persons who automatically have title to sue for non-patrimonial loss will also be the persons who are most likely in fact to have suffered such losses.

2.9 Second, some consultees argued that there could be exceptional situations where persons outwith the deceased's immediate family, such as teachers, neighbours or friends, could in fact suffer such losses. However, in our view the possibility of an exceptional situation does not justify the introduction of a judicial discretion to allow such claims. There would have to be some criterion which the court could use to identify such persons. Almost inevitably this would involve the question whether or not there was a close relationship of love and affection between the claimant and the deceased. This could result in prolonged and potentially embarrassing litigation in order to prove his or her loss.⁹ There would be scope for speculative claims. This in turn would discourage insurers to settle. In short, an unacceptable degree of uncertainty would be introduced into the law. Moreover, if our recommendations as to the membership of the deceased's immediate family are accepted, the vast majority of persons likely to suffer non-patrimonial losses because of their close relationship with the deceased will be included. We do not think that the certainty brought to the law by having a fixed list of persons with title to sue should be abandoned in favour of a system which involves a substantial degree of judicial discretion.¹⁰

2.10 It cannot be overemphasised that the right to seek damages on the death of a relative is, for the reasons discussed above,¹¹ an exceptional right in the Scots law of delict. In our opinion it is a right which should be restricted to those persons who had an extremely close relationship with the deceased. This idea is encapsulated by the 1976 Act which restricts title to sue to the deceased's immediate family. However, it is clear from consultation that the list of persons who currently constitute the deceased's immediate family needs to be updated to reflect the family structures found in contemporary Scotland. In the next paragraph we set out the policy aims in our approach to this issue.

Policy Aims

2.11 In light of consultation and further discussion, our overall policy aims are to:

- (a) retain the concept of the deceased's immediate family;
- (b) ensure that it consists of those relatives who are likely to have had a close tie of love and affection with the deceased in the context of contemporary family structures;
- (c) give appropriate weight to relationships which can arise between persons who have lived and/or been brought up in the same household; and

⁹ See, for example, *Beggs v Motherwell Bridge Fabricators Ltd* 1998 SLT 1215 per the Lord Ordinary (Eassie) at 1223 – 1224.

¹⁰ Of course, the court will still have to make decisions which involve an element of judicial discretion in relation to issues which involve questions of degree, for example, whether a particular couple have been living together as husband and wife.

¹¹ See paras 2.4 to 2.6.

(d) exclude relationships by affinity.¹²

The present members of the deceased's immediate family

2.12 In our discussion paper, we invited consultees to comment on whether existing members of the deceased's immediate family, as set out in Schedule 1 to the 1976 Act, should continue to have title to sue for non-patrimonial damages under section 1(4) of the Act. In general, consultees took the view that those presently entitled should continue to be able to sue. We consider the present members of the deceased's immediate family in the following paragraphs.

2.13 *Surviving spouse.* At present a surviving spouse of the deceased can sue for non-patrimonial damages.¹³ Paragraph 1(a) of Schedule 1 to the 1976 Act defines the deceased's immediate family for the purposes of section 1(4) as including "any person who immediately before the deceased's death was the spouse of the deceased". In response to the question in our discussion paper,¹⁴ consultees were overwhelmingly in favour of a surviving spouse of the deceased continuing to have title to sue for non-patrimonial damages. We agree. Moreover, we are of the view that "spouse" should continue to include the survivor(s) of a polygamous as well as a monogamous marriage. In earlier family law legislation, this was the subject of express provision.¹⁵ However, as a matter of statutory construction,¹⁶ it has long been the rule that words in the singular include the plural. It follows that "spouse" automatically includes a spouse of a polygamous as well as monogamous marriage.¹⁷ There is therefore no need for a specific provision relating to polygamous marriages.

2.14 It should be noted that the pursuer must have been married to the deceased immediately before the death. This means that a former spouse does not have title to sue. On the other hand, a spouse who has separated from, but not yet divorced, the deceased at the time of death retains title to sue. We have considered whether such a spouse should continue to have such title. In theory, the fact that the marriage was breaking down could be reflected in the damages awarded: in practice, an insurance company is usually prepared to settle once it is established that the complainant is the surviving spouse of the deceased. However, the number of cases where the parties have separated but not divorced, and where the spouse dies, is likely to be few. Accordingly, we do not feel that it is necessary to overcomplicate the 1976 Act by making a specific exception for a spouse who was separated from the deceased at the date of death.

¹² Except in relation to title to sue for patrimonial loss.

¹³ 1976 Act, s 1(4) and Sch 1, para 1(a).

¹⁴ DP No 116, question 2, para 3.12.

¹⁵ Family Law (Scotland) Act 1985, (c 37) s 1(5) which defines "husband" and "wife" to include parties to a valid polygamous marriage.

¹⁶ Interpretation Act 1978, (c 30) s 6(c), which re-enacted the Interpretation Act 1889, (c 63) s 1(1)(b). Our draft Bill would be subject to The Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, SI 1999/1379, article 6 and Sch 1, para 3(c), which provides that in an Act of the Scottish Parliament, words in the singular include the plural unless the contrary intention appears. See also *In Re Surrey Leisure Ltd* [1999] 2 BCLC 457.

¹⁷ *Iman Din v National Assistance Board* [1967] 2 QB 213 at 218.

2.15 We therefore recommend that:

1. **Any person who, immediately before the deceased's death, was the spouse of the deceased should continue to be entitled to sue for non-patrimonial loss.**

(Draft Bill, section 1(4)(b), [new para 1A(a)])

2.16 *Surviving opposite-sex cohabitants.* At present an opposite-sex cohabitant of the deceased has title to sue for non-patrimonial damages.¹⁸ Paragraph 1(aa) of Schedule 1 to the 1976 Act defines the deceased's immediate family for the purposes of section 1(4) as including "any person, not being the spouse of the deceased, who was, immediately before the deceased's death, living with the deceased as husband and wife". In response to the question in our discussion paper,¹⁹ the overwhelming majority of consultees thought that the deceased's surviving opposite-sex cohabitant should continue to be entitled to sue for non-patrimonial damages. We agree. A number of consultees commented on the use of the term "heterosexual cohabitant" in our discussion paper. They considered that the term was inappropriate as it appeared to suggest a relationship based on specific sexual orientation. They advocated the use of the term "opposite-sex" cohabitant, which we are happy to adopt.

2.17 Opposite-sex cohabitants are generally entitled to sue for non-patrimonial damages in jurisdictions with wrongful death legislation. Often, however, the couple have had to live together for a minimum period before there is title to sue. For example, Irish law demands the couple have cohabited as husband and wife for a continuous period of not less than three years.²⁰ In Canada, Nova Scotia requires one year,²¹ Alberta three years²² and Manitoba five years.²³ In Australia, most states and territories have a time limit of between one and three years. However, in South Australia and Western Australia the time period requirement is dispensed with if there is a child of the relationship, while in Tasmania the court has discretion to recognise a cohabitant as a *de facto* spouse notwithstanding the fact that the time limit has not been met. On the other hand, the Australian Capital Territory and the Northern Territory require only that the claimant was living with the deceased in a *bona fide* domestic relationship at the time of the death.

2.18 In their Report on *Claims for Wrongful Death*,²⁴ the Law Commission advocated that opposite-sex cohabitants must have lived together for at least two years. They came to the conclusion that although two years was an arbitrary limit, it was a necessary filter.

2.19 The 1976 Act makes no provision for a minimum time limit, but this does not appear to have caused any difficulties in practice. Accordingly, we do not recommend any change to the Act in this respect. A minimum time limit would be arbitrary. Before an applicant has title to sue, the court must be satisfied that the opposite-sex couple were in fact living together as husband and wife. While this concept is difficult to define, it does involve an

¹⁸ 1976 Act, s 1(4) and Sch 1, para 1(aa). Sub-paragraph (aa) was added to Schedule 1 to the 1976 Act by the Administration of Justice Act 1982, (c 53) s 14(4). It was added to give recognition to cohabiting opposite-sex couples.

¹⁹ DP No 116, question 3, para 3.16.

²⁰ The Civil Liability Act 1961, s 47(1) as substituted by the Civil Liability Amendment Act 1996, s 1(1)(c).

²¹ Fatal Injuries Act RSNS 1989, s 2.

²² Fatal Accidents Act RSA 1980, s 8(2)(a).

²³ Fatal Accidents Act CCSM 1987, s 3(5).

²⁴ (1999) Law Com No 263, para 6.24.

element of stability in the relationship. It is ultimately a question of fact. In practice, the claimant would probably only require to prove that he or she was living with the deceased. To add an arbitrary time limit would bring an element of artificiality to the process and be productive of the inevitable "hard case" where the couple fail to satisfy the requirement by a narrow margin.

2.20 Accordingly, we recommend that:

2. **Any person who, immediately before the deceased's death, was the opposite-sex cohabitant of the deceased should continue to be entitled to sue for non-patrimonial damages.**

(Draft Bill, section 1(4)(b), [new para 1A(b)])

2.21 *Parents.* At present under the 1976 Act parents are entitled to sue for non-patrimonial damages. Paragraph 1(b) of Schedule 1 defines the immediate family for the purposes of section 1(4) of the Act to include "any person who was a parent of the deceased". "Parent" is not defined. However, it includes the deceased's biological mother and father,²⁵ and it does not matter that the deceased's father has never been married to the deceased's mother.²⁶ Adoptive parents,²⁷ parents by virtue of a parental order²⁸ and step-parents²⁹ are included. The case of *Monteith v Cape Insulation*³⁰ confirmed that, as a matter of statutory construction, parents-in-law are also entitled to sue.³¹ Foster parents are not included.

2.22 *Parental rights and responsibilities.* At present a person who was accepted by a deceased as a child of the family is treated as a member of the deceased's immediate family.³² However, a person who has accepted a deceased as a child of the family is not treated as the deceased's parent.

2.23 In the discussion paper we suggested that a solution would be to re-define "parent" as "any person who had parental rights and responsibilities in relation to the deceased". For this purpose, parental rights and responsibilities would include the obligation to aliment the deceased.³³ There was a mixed response from consultees to this suggestion. On further consideration, we have decided not to recommend this definition for the following reasons. First, section 1(6) of the 1976 Act provides that for the purposes of patrimonial loss there is no requirement to show that the deceased owed the claimant an obligation of aliment in order to establish loss of support. Therefore, if an obligation to aliment became a condition of title to sue for the purposes of non-patrimonial loss, a potential conflict with section 1(6) would arise in relation to patrimonial loss. Second, we think that it is inappropriate to include as a member of the deceased's immediate family a person who has parental

²⁵ This includes a person deemed to be the mother or father of the child under the Human Fertilisation and Embryology Act 1990, (c 37), ss 27 and 28. Persons deemed not to be genetic parents under this legislation are excluded. However, where the child has been adopted, the biological mother and father are excluded by virtue of the Adoption (Scotland) Act 1978, (c 28) s 39.

²⁶ 1976 Act, Sch 1, para 2(b) which applies the Law Reform (Parent and Child) (Scotland) Act 1986, (c 9) s 1(1) to the 1976 Act.

²⁷ Adoption (Scotland) Act 1978, (c 28) s 39.

²⁸ Under the Human Fertilisation and Embryology Act 1990, (c 37) s 30.

²⁹ 1976 Act, s 1(3) and Sch 1, paras 1(b) and 2(a).

³⁰ 1998 SC 903.

³¹ 1976 Act, s 1(4) and Sch 1, para 2(a).

³² 1976 Act, s 1(4) and Sch 1, para 1(c). See discussion at paras 2.34 to 2.40 below.

³³ DP No 116, question 10, para 3.42.

responsibilities and rights but has not accepted the child as a child of the family.³⁴ As explained below, in our view the test should be that the claimant had accepted the deceased as a child of the family.³⁵

2.24 *Biological parents of a child.* As mentioned above, the deceased's biological parents can sue for non-patrimonial loss.³⁶ We asked consultees whether biological parents should continue to have title to sue for non-patrimonial loss.³⁷ Consultees considered that they should. We agree. The relationship between parent and child has been recognised as fundamental to society,³⁸ and should in our view continue to be recognised for the purposes of damages under the 1976 Act.

2.25 *Adoptive parents of a child.* Adoptive parents are entitled to sue for non-patrimonial loss. Following consultation we do not recommend any change to the 1976 Act in this respect.

2.26 *Biological parents of an adopted child.* At present the biological parents of an adopted child cannot sue for non-patrimonial loss.³⁹ Adoption permanently severs the legal relationship between the child and the biological parents.⁴⁰ However, there may be cases of "open adoption" where the child and biological parents retain some form of contact. Furthermore, an adopted child and his or her biological parents may wish to trace each other, and in doing so may establish a close relationship.

2.27 Accordingly, we sought the views of consultees as to whether the 1976 Act should be amended to allow biological mothers to sue.⁴¹ Some consultees suggested that adoption should continue to be regarded as a complete legal break between the child and his natural family. Other consultees commented that an increase in the practice of open adoptions should be taken into account in determining entitlement to sue.

2.28 We recognise that there may be situations where a child and biological parent maintain a close relationship through open adoption, or develop such a relationship through later contact. However, after further discussion, we take the view that the 1976 Act should not be amended to allow biological parents of an adopted child to sue for non-patrimonial or patrimonial loss. We have found this issue very difficult to decide. We have reached this conclusion for the following reasons.

2.29 First, to allow biological parents to sue constitutes a significant departure from the existing principle that adoption terminates the legal relationship between child and biological parent. This principle is based on the view that adoption is intended to produce a permanent result and to create a legally and emotionally secure relationship between the child and his adoptive parents.⁴²

³⁴ For example, a person whose only parental responsibility and right was to act as the legal representative of the child.

³⁵ See paras 2.39 and 2.40 below.

³⁶ Except where the child has been adopted.

³⁷ DP No 116, question 4(a), para 3.20.

³⁸ The United Nations Convention on the Rights of the Child regards respect for the parent-child relationship as fundamental.

³⁹ Nor can they sue for patrimonial loss.

⁴⁰ Adoption (Scotland) Act 1978, (c 28) s 39.

⁴¹ DP No 116, question 4(b), para 3.20.

⁴² *D v Grampian Regional Council* 1995 SLT 519.

2.30 Second, if, as well as the adoptive parents, the biological parents are entitled to sue, there is potential for unpleasant interactions between the parties in some cases. The loss of a child is distressing enough for an adoptive parent without adding the risk of unwanted contact with a biological parent who in every other respect has lost all legal responsibilities and rights in connection with the child.

2.31 There is also the question of where to draw the line in relation to the biological family's entitlement to sue. If biological parents of an adopted child were to be allowed to sue for non-patrimonial loss, the question could arise as to whether biological brothers, sisters and grandparents of an adopted child should become similarly entitled.

2.32 Above all, our policy is to restrict title to sue for non-patrimonial loss to close members of the deceased's immediate family, and to those who immediately before the deceased's death were living with the deceased. We take the view that it is adoptive parents who are most likely to have been living in such a close familial relationship with the child. We therefore consider that adoptive parents should be regarded as the closest family members for the purposes of entitlement to sue for non-patrimonial loss. Accordingly, we do not recommend that the 1976 Act should be amended to allow biological parents to sue for non-patrimonial loss on the death of their adopted child.

2.33 *Parents-in-law.* At present a deceased's parents-in-law can sue for non-patrimonial loss. Paragraph 2(a) of Schedule 1 to the 1976 Act provides that, in determining any relationship for the purposes of the list of persons in paragraph 1, any relationship by affinity shall be treated as a relationship by consanguinity. Paragraph 2(a) applies in determining the relatives who are entitled to sue for patrimonial loss and also the members of the sub-set of those relatives (the deceased's immediate family) who are entitled to sue for non-patrimonial loss.

2.34 In Appendix II to our Report on *The Law Relating to Damages for Injuries Causing Death*,⁴³ which was implemented by the 1976 Act, we indicated that relationships by affinity were not to be included for the purposes of title to sue for loss of society.⁴⁴ However, relationships by affinity were included in the 1976 Act in relation to both patrimonial and non-patrimonial damages.⁴⁵ In the case of *Monteith v Cape Insulation*⁴⁶ the deceased's mother-in-law claimed damages for non-patrimonial loss under the 1976 Act. The court held that the provisions of the Act should be construed literally when determining the relatives who constituted the deceased's immediate family. Accordingly the mother-in-law's claim was relevant.

2.35 We asked consultees whether parents-in-law and other relationships by affinity should be entitled to sue for non-patrimonial loss.⁴⁷ While some consultees thought that parents-in-law should continue to be entitled to sue, others suggested that they are not usually part of the deceased's household. After further reflection, we take the view that relatives by affinity are generally too remote from the deceased to suffer non-patrimonial losses. Accordingly, we recommend that parents-in-law should no longer be entitled to sue

⁴³ Scot Law Com No 31, p 43.

⁴⁴ The heads of non-patrimonial loss in s 1(4) of the 1976 Act, introduced by the Damages (Scotland) Act 1993, (c 5) s 1(1), replaced the former "loss of society" award.

⁴⁵ 1976 Act, Sch 1, para 2(a).

⁴⁶ 1998 SC 903.

⁴⁷ DP No 116, questions 4(c), 5(c), 6(b) and 7(b), paras 3.20, 3.23, 3.27 and 3.30.

for non-patrimonial loss. However, they should continue to be entitled to sue for patrimonial loss as the deceased may have been supporting them financially.⁴⁸

2.36 *Step-parents.* As mentioned above, a step-parent is included in the meaning of "parent"⁴⁹ and thus can sue for non-patrimonial loss. We did not specifically ask consultees whether step-parents should continue to be able to sue.

2.37 On the one hand the concept of step-parent is wide. It includes any person who is married to the biological or adoptive parent of the deceased. We have no difficulty in regarding a step-parent as a member of the deceased's immediate family when he or she has played a part in the upbringing of the deceased child. But that will not always be the case, particularly where the step-parent's marriage took place when the child was an adult.

2.38 On the other hand, the concept is narrow, as the relationship is only constituted by marriage. In modern family structures, a person can often play a major role in a child's upbringing even although he or she does not marry the child's biological or adoptive parent.

2.39 We take the view that step-parents as such should no longer be entitled to sue for non-patrimonial damages under the 1976 Act. However, they should continue to be entitled to sue for patrimonial loss as the deceased may have been supporting them financially.⁵⁰ In place of step-parents, the 1976 Act should be amended to provide that anyone who has accepted a child as a child of the family should have title to sue for non-patrimonial loss as a consequence of the death of that child. This amendment would tie in with the existing rule which we discuss below,⁵¹ that a person accepted by the deceased as a child of the family should continue to be entitled to sue for non-patrimonial loss, thus completing the symmetry of the provisions.

2.40 The effect of the amendment would be to include those step-parents who in fact accept a child as a child of the family. It would also have the effect of including the biological parent's unmarried partner who accepts the child as a child of the family and also anyone who does so even where he or she has had no relationship with the biological parent of the deceased child.⁵² It would also include the deceased's foster parents who have accepted the child as a child of the family.⁵³ We take the view that a person who voluntarily accepts a child as a child of the family has sufficiently close ties with the child to be treated as a member of the child's immediate family.

2.41 Accordingly, we make the following recommendations:

3. **Any person who was a parent of the deceased should continue to be entitled to sue for non-patrimonial loss. For this purpose "parent" should continue to include any person who was -**

⁴⁸ Draft Bill, s 1(4)(d).

⁴⁹ 1976 Act, s 1(4) and Sch 1, para 1(b) and 2(a).

⁵⁰ Draft Bill, s 1(4)(d).

⁵¹ Para 2.44.

⁵² A person who has accepted a child as a child of the family owes that child an obligation of aliment under s1(1)(d) of the Family Law (Scotland) Act 1985, (c 37).

⁵³ In relation to local authority foster parents, the local authority has the obligation to aliment the child. However, local authority foster parents would be entitled to sue for non-patrimonial loss where they had accepted the child as a child of the family.

- (a) a biological parent of the deceased, except where the deceased was adopted;**
- (b) an adoptive parent of the deceased;**
- (c) a parent of the deceased by virtue of a parental order.**

(Draft Bill, section 1(4)(b), [new para 1A(d)])

4. The 1976 Act should be amended to provide that -

- (a) any person who had accepted the deceased as a child of the family should be entitled to sue for non-patrimonial and patrimonial loss; and**
- (b) "parent" (for the purpose of title to sue for non-patrimonial loss) should not include step-parent and parent-in-law.**

(Draft Bill, section 1(4)(a)(ii), 1(4)(b), [new para 1A(e)], and 1(4)(c)(ii) and (d))

2.42 *Children.* At present a child of the deceased has title to sue for non-patrimonial loss. Paragraph 1(b) of Schedule 1 defines the immediate family for the purposes of section 1(4) of the 1976 Act to include "any person who was a child of the deceased". At present "child" is not specifically defined. However, it has an extended meaning for the purposes of the Act. It includes the deceased's biological child,⁵⁴ adopted child,⁵⁵ child by virtue of a parental order,⁵⁶ step-child⁵⁷ and any child who was accepted by the deceased as a child of the family.⁵⁸ It also includes the deceased's son-in-law and daughter-in-law.⁵⁹

2.43 We asked consultees whether a child should continue to be entitled to sue for non-patrimonial loss.⁶⁰ We also asked consultees whether sons and daughters-in-law should be entitled to sue⁶¹ and whether "child" should be defined to include an adopted person whose biological mother was the deceased.⁶² All our consultees considered that a child of the deceased should continue to have title to sue for non-patrimonial loss. Some consultees also thought that "child" should include an adopted person whose biological mother was the deceased. Several consultees thought that a deceased's son-in-law and daughter-in-law should be entitled to sue.

2.44 Following consultation, it is our view that, as the relationship between parent and child corresponds, our recommendations concerning the deceased's child should correspond with our recommendations concerning the deceased's parents. Thus a person should not be entitled to sue for non-patrimonial loss merely because he or she is a step-child of the

⁵⁴ 1976 Act, Sch 1, para 2(b), which applies the Law Reform (Parent and Child) (Scotland) Act 1986, (c 9) s 1(1) to the 1976 Act. That section provides that the fact that a person's parents are not or have not been married to one another shall be disregarded. The deceased's biological child who has been adopted is not included. See Adoption (Scotland) Act 1978, (c 28) s 39.

⁵⁵ By virtue of the Adoption (Scotland) Act 1978, (c 28) s 39.

⁵⁶ Under the Human Fertilisation and Embryology Act 1990, (c 37) s 30.

⁵⁷ 1976 Act, Sch 1, para 2(a).

⁵⁸ 1976 Act, Sch 1, para 1(c).

⁵⁹ 1976 Act, Sch 1, para 2(a). See also *Monteith v Cape Insulation*, 1998 SC 903; *McAllister v Imperial Chemical Industries plc* 1997 SLT 351.

⁶⁰ DP No 116, question 5(a), para 3.23.

⁶¹ DP No 116, question 5(c), para 3.23.

⁶² DP No 116, question 5(b), para 3.23.

deceased.⁶³ As at present, he or she must have been accepted by the deceased as a child of the deceased's family.⁶⁴ In that respect we think that there should be no change to the 1976 Act.

2.45 For the reasons discussed above in relation to parents, we think that, where a child has been adopted, he or she should not be entitled to sue for non-patrimonial loss in the event of the death of his or her biological parent.

2.46 Many of our consultees were in favour of children-in-law having title to sue for non-patrimonial loss. However, as we recommend in relation to parents-in-law, we remain of the view that relatives by affinity are too remote to be treated as members of the deceased's immediate family. Accordingly, children-in-law should not be entitled to sue for non-patrimonial loss. However, they should continue to be entitled to sue for patrimonial loss as the deceased may have been supporting them financially.⁶⁵

2.47 Accordingly, we make the following recommendations:

5. Any person who was a child of the deceased should continue to be entitled to sue for non-patrimonial loss. For this purpose "child" should continue to include any person who was -

(a) a biological child of the deceased, except where the child was adopted;

(b) an adopted child of the deceased;

(c) a child of the deceased by virtue of a parental order.

(Draft Bill, section 1(4)(b), [new para 1A(d)])

6. Any person who was accepted by the deceased as a child of the family should continue to be entitled to sue for non-patrimonial and patrimonial loss.

(Draft Bill, section 1(4)(a)(ii) and (b), [new para 1A(e)])

7. The 1976 Act should be amended to provide that "child" (for the purpose of title to sue for non-patrimonial loss) should not include step-child and child-in-law.

(Draft Bill, section 1(4)(c)(ii) and (d))

Expanding the concept of the deceased's immediate family

2.48 There have been considerable changes in family structures in Scotland since the 1976 Act was enacted. These include increasing diversity as a consequence of a multicultural society; the decline in marriage as the dominant legal regime for opposite-sex couples; and changing attitudes towards same-sex relationships. We therefore agree with our consultees

⁶³ However, step-children should continue to be entitled to sue for patrimonial loss as the deceased may have been supporting them financially. Draft Bill, s 1(4)(d).

⁶⁴ 1976 Act, Sch 1, para 1(c).

⁶⁵ Draft Bill, s 1(4)(d).

that the current list of the deceased's immediate family should be expanded to take account of these social changes and to include some relatives who at present are not entitled to sue for non-patrimonial loss.

2.49 *Brothers and sisters.* At present brothers and sisters of the deceased are not included in the list of the deceased's immediate family in Schedule 1 to the 1976 Act and thus they are not entitled to sue for non-patrimonial loss.⁶⁶ The absence of brothers and sisters from the list of the deceased's immediate family has been the subject of much criticism. In *Quinn v Reed*⁶⁷ the Lord Ordinary (Grieve) commented that:

"It seems unrealistic to my mind that brothers and sisters could in certain circumstances claim for loss of support,⁶⁸ but never in any circumstances for loss of society."⁶⁹

2.50 In our discussion paper we asked consultees whether brothers and sisters of the deceased should be entitled to sue for non-patrimonial loss.⁷⁰ The vast majority of consultees took the view that they should. They recognised that a close bond may exist between siblings and that significant loss could result as a consequence of the death of one of them. We agree with consultees. We have been influenced by the fact that many other jurisdictions already entitle brothers and sisters to sue for non-patrimonial damages or their equivalent.⁷¹ Siblings of the half blood are often included. Under the 1976 Act, half-brothers and half-sisters already have title to sue for patrimonial damages.⁷² However, because brothers and sisters cannot sue for non-patrimonial loss, neither can half-brothers and half-sisters. We take the view that the 1976 Act should be amended to allow brothers and sisters to sue for non-patrimonial loss. Half-brothers and half-sisters will automatically be entitled to sue as a consequence of the existing provisions of the 1976 Act.⁷³

2.51 *Brothers-in-law and sisters-in-law.* At present, because brothers and sisters cannot sue for non-patrimonial loss, neither can their relatives by affinity, namely brothers-in-law and sisters-in-law.⁷⁴ We asked consultees whether they should be entitled to sue.⁷⁵ There was a mixed response to this question. However, as mentioned above,⁷⁶ we now take the view that relationships by affinity should not be entitled to sue for non-patrimonial loss.⁷⁷ Although we consider that the 1976 Act should be extended to allow brothers and sisters to sue for non-patrimonial loss, we adhere to the view that brothers-in-law and sisters-in-law should not be entitled to sue.

⁶⁶ Brothers and sisters can sue for patrimonial loss under the 1976 Act, s 1(3) and Sch 1, para 1(e).

⁶⁷ 1981 SLT (Notes) 117.

⁶⁸ I.e. patrimonial loss.

⁶⁹ The heads of non-patrimonial loss in s 1(4) of the 1976 Act introduced by the Damages (Scotland) Act 1993 (c 5), s 1(1), replaced the former "loss of society" award.

⁷⁰ DP No 116, question 7(a), para 3.30.

⁷¹ These include Ireland, Manitoba and almost all Australian states and territories.

⁷² 1976 Act, s 1(3) and Sch 1, paras 1(e), and 2(a) which provides that relationships of the half blood shall be treated as relationships of the whole blood.

⁷³ 1976 Act, Sch 1, para 2(a).

⁷⁴ Brothers-in-law and sisters-in-law are entitled to sue for patrimonial loss under the 1976 Act, s 1(3) and Sch 1, paras 1(e) and 2(a).

⁷⁵ DP No 116, question 7(b), para 3.30.

⁷⁶ Para 2.35 above.

⁷⁷ However, they should continue to be entitled to sue for patrimonial loss as the deceased may have been supporting them financially. Draft Bill, s 1(4)(d).

2.52 *De facto brothers and sisters.* We are recommending that the deceased's brothers and sisters should have title to sue because there can be very close emotional ties between them. One of the reasons why they can be so close is that usually they will have been brought up in the same household. Today it has become quite common for children to be brought up by one of their parents along with the parent's spouse or cohabitant. The question therefore arises whether a child of the spouse or cohabitant should have title to sue if he or she was raised in the same household as the deceased.

2.53 If our recommendations are accepted, half-brothers and half-sisters will have title to sue on the death of a sibling.⁷⁸ Yet, where they had been brought up in the same household, the deceased might have had a much closer emotional relationship with a child of the parent's spouse or cohabitant, particularly if they were of similar age. Such children are *de facto* siblings.⁷⁹ We think that there is a case for such a child to have title to sue. We therefore consider that for the purpose of the 1976 Act the brother or sister of the deceased should include a person who was brought up as a child of the family in the same household in which the deceased was also a child of the family.

2.54 Accordingly we recommend that:

8. The 1976 Act should be amended to provide that –

(a) any person who was the brother or sister of the deceased should be entitled to sue for non-patrimonial loss;

(b) "brother" and "sister" (for the purposes of title to sue for non-patrimonial and patrimonial loss) should include any person who was brought up in the same household and as a child of the same family as the deceased; and

(c) "brother" and "sister" (for the purpose of title to sue for non-patrimonial loss) should not include brother-in-law or sister-in-law.

(Draft Bill, section 1(4)(b), [new para 1A(f)], and 1(4)(c)(ii) and (d))

2.55 *Grandparents and grandchildren.* At present grandparents and grandchildren of a deceased are not included in the list of the deceased's immediate family in Schedule 1 to the 1976 Act. They are therefore not entitled to sue for non-patrimonial loss.⁸⁰ In response to the question whether they should have title to sue,⁸¹ the vast majority of consultees took the view that they should. We agree for the following reasons. It is common for strong affective relationships to arise between grandparents and grandchildren. Also, grandparents often assist with looking after grandchildren. We have also taken account of the fact that many other jurisdictions recognise these relationships with regard to non-patrimonial damages or their equivalent.⁸² However, we do not think that title to sue for non-patrimonial damages should be extended to remoter ascendants or descendants,⁸³ as it is less likely that a close

⁷⁸ This is because the 1976 Act, Sch 1, para 2(a) provides that relationships of the half blood shall be treated as relationships of the whole blood.

⁷⁹ The marital status of the parent and partner is irrelevant: it is the *de facto* relationship that is important.

⁸⁰ They are entitled to sue for patrimonial loss under the 1976 Act, s 1(3) and Sch 1, para 1(d).

⁸¹ DP No 116, question 6(a), para 3.27.

⁸² This includes Ireland, most Canadian provinces and most Australian states and territories.

⁸³ For example, great grandparents and great grandchildren.

affective relationship would have developed between the parties. In our draft Bill, therefore, we have referred to "grandparent" and "grandchild" rather than "ascendant" and "descendant".⁸⁴

2.56 We therefore recommend that:

9. **The 1976 Act should be amended to provide that any person who was the grandparent or grandchild of the deceased should be entitled to sue for non-patrimonial loss.**

(Draft Bill, section 1(4)(b), [new para 1A(f)])

2.57 *Same-sex cohabitants.* At present the list of the deceased's immediate family does not include the deceased's same-sex cohabitant, who is therefore not entitled to sue for non-patrimonial loss.⁸⁵

2.58 We asked consultees whether the 1976 Act should be amended to allow same-sex cohabitants to sue for non-patrimonial loss.⁸⁶ All our consultees took the view that it should. A number of consultees commented on the use of the term "homosexual cohabitant" in our discussion paper. They considered that the term was inappropriate, as it appeared to suggest a relationship based on specific sexual orientation. They suggested that the term "same-sex cohabitant" should be used, which we are happy to adopt.

2.59 We have recommended that the deceased's opposite-sex cohabitant should continue to have title to sue for non-patrimonial loss.⁸⁷ This recognises the fact that many couples in Scotland now choose to cohabit without marrying. Under Scots law parties of the same sex lack the capacity to marry each other⁸⁸ and have no choice but to cohabit should they wish to live together. As a matter of principle, it appears to us that same-sex cohabitants should be treated in the same way as opposite-sex cohabitants. The non-patrimonial losses suffered by the surviving partner are the same in both situations.

2.60 Over the last twenty years or so, there has been increasing social and legal recognition of same-sex relationships. They have been recognised in recent legislation of the Scottish Parliament, such as the Adults with Incapacity (Scotland) Act 2000.⁸⁹ In other areas of private law, same-sex couples have been recognised as constituting a family. In *Fitzpatrick v Sterling Housing Association Ltd*,⁹⁰ for example, a surviving same-sex cohabitant was recognised by the House of Lords as a member of the deceased's family for the purpose of the Rent Acts. Again, in *T, Petitioner*⁹¹ the Inner House of the Court of Session held that a man could adopt a child, even though he was living with a same-sex partner.⁹²

⁸⁴ As in the 1976 Act, Sch 1, para 1(d).

⁸⁵ At present, same-sex cohabitants are also not entitled to sue for patrimonial loss.

⁸⁶ DP No 116, question 9, para 3.39.

⁸⁷ See para 2.20 above.

⁸⁸ *Stair, Institutes* I 4.1 – I 4.6. Section 5(4)(e) of the Marriage (Scotland) Act 1977, (c 15) recognises that there is a legal impediment to marriages where parties are of the same sex.

⁸⁹ (asp 4) s 87. See also Mortgage Rights (Scotland) Act 2001, (asp 11) s 1(2)(c).

⁹⁰ [1999] 4 All ER 705.

⁹¹ 1996 SCLR 897.

⁹² Other examples include *Tinsley v Milligan* [1994] 1 AC 340. In *Tinsley* a same-sex partner was allowed to claim property from the other, on the basis of a "common intention constructive trust." Similarly, in *Wayling v Jones* [1995] 2 FLR 1029, the Court of Appeal accepted that the plaintiff could claim a portion of Jones' estate under the English concept of proprietary estoppel.

2.61 Some consultees commented that the continued exclusion of the deceased's same-sex cohabitant from the list of those entitled to sue for non-patrimonial loss could be held to be a breach of the European Convention on Human Rights. In *Salgueiro da Silva Mouta v Portugal*,⁹³ the European Court of Human Rights recognised that discrimination on the grounds of sexual orientation in respect of the enjoyment of the rights and freedoms enshrined in the Convention could constitute a breach of Article 14. This Article prohibits discrimination on any ground such as sex, race, colour, religion etc. Article 8 of the Convention provides that "Everyone has a right to respect for his private and family life...". While the Court has not yet held that a same-sex relationship constitutes "family life" under Article 8, it has shown increasing willingness to apply the Article to *de facto* family relationships. If the deceased's opposite-sex cohabitant has title to sue under the 1976 Act and the deceased's same-sex cohabitant has not, it is arguable that this could constitute a violation of Article 8 as read with Article 14.

2.62 In some other jurisdictions same-sex cohabitants are entitled to sue for non-patrimonial loss. For example, in Australia, the definition of "*de facto* relationship" in the New South Wales legislation extends to same-sex cohabitation.⁹⁴

2.63 For these reasons it appears that the exclusion of same-sex cohabitants from the 1976 Act can no longer be justified. We therefore agree with consultees that same-sex cohabitants should be entitled to sue for non-patrimonial loss. We explained above⁹⁵ that in our view anybody whom we recommend should be added to the list of the deceased's immediate family for the purpose of title to sue for non-patrimonial loss should also be entitled to sue for patrimonial loss. It follows that the same-sex cohabitant should automatically be entitled to sue for patrimonial loss, as well as non-patrimonial loss. Indeed, the arguments outlined above are equally valid in relation to title to sue for patrimonial loss. Given the overwhelming support of consultees, we feel that the recommendation is justified.

2.64 As mentioned above, in our view the position of same-sex cohabitants should be the same as opposite-sex cohabitants. In order to qualify, the claimant must have been cohabiting with the deceased immediately before the deceased's death. Former cohabitants should not have title to sue and there should be no minimum period of cohabitation. However, as in the case of opposite-sex cohabitation, same-sex cohabitation should involve some degree of stability and commitment in order to qualify. Our draft Bill therefore defines a same-sex cohabitant as "any person of the same sex as the deceased who was living with the deceased in a relationship which had the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife."⁹⁶ While this definition is not ideal in that it defines the relationship by reference to a married couple, it has been used in other recent legislation and appears to have become an accepted method to describe same-sex cohabitants for legal purposes.

⁹³ 2001 Fam LR 2.

⁹⁴ "Spouse" includes a party to a *de facto* relationship within the Property (Relationships) Act 1984. The Property (Relationships) Legislation Amendment Act 1999 extended the meaning of *de facto* relationship to include same-sex relationships.

⁹⁵ Para 2.3.

⁹⁶ The definition is adapted from the Adults with Incapacity (Scotland) Act 2000, (asp 4) s 87. See also the Mortgage Rights (Scotland) Act 2001, (asp 11) s 1(2)(c).

2.65 Accordingly we recommend that:

10. The 1976 Act should be amended to provide that –

(a) any person who, immediately before the deceased's death, was the same-sex cohabitant of the deceased should be entitled to sue for patrimonial and non-patrimonial loss; and

(b) "same-sex cohabitant" (for the purposes of title to sue for non-patrimonial and patrimonial loss) should mean any person who was living with the deceased in a relationship which had the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife.

(Draft Bill, section 1(4)(a)(i) and (b) [new para 1A(c)])

Other relationships

2.66 In our discussion paper we sought the views of consultees on whether the list of the deceased's immediate family should be expanded to include certain other relationships. We discuss these in the following paragraphs.

2.67 *Former spouse.* Paragraph 1(f) of Schedule 1 provides that "relative" for the purpose of title to sue for patrimonial damages includes "any person who, having been a spouse of the deceased, had ceased to be so by virtue of a divorce". However, former spouses of the deceased are not included in the sub-set of relatives comprising the deceased's immediate family. Thus they are not entitled to sue for non-patrimonial damages.

2.68 In response to the question in our discussion paper,⁹⁷ consultees took the view that there should be no change to the 1976 Act in this respect. We agree for two reasons. First, irretrievable breakdown of a marriage is the sole ground for divorce. Hence the former spouse's relationship with the deceased has irretrievably broken down prior to the deceased's death.⁹⁸ Second, the provisions of the Family Law (Scotland) Act 1985⁹⁹ endeavour to achieve a clean financial break between parties when they divorce. We therefore see no grounds for amending the 1976 Act in this respect.¹⁰⁰

2.69 *Engaged couples.* At present the deceased's fiancé(e) has no title to sue for non-patrimonial loss.¹⁰¹ We asked consultees whether a person who at the time of the deceased's death was engaged to be married to the deceased (but who was not cohabiting with the deceased), should be entitled to sue for non-patrimonial loss.¹⁰² Consultees were divided on this issue. Many raised valid arguments both for and against allowing engaged couples to sue for non-patrimonial loss.

2.70 The arguments in favour of allowing engaged couples title to sue for non-patrimonial loss are as follows. First, it is to be expected that engaged couples will have

⁹⁷ DP No 116, question 8, para 3.33.

⁹⁸ Divorce (Scotland) Act 1976, (c 39) s 1(1).

⁹⁹ (c 37).

¹⁰⁰ However, a former spouse should continue to be entitled to sue for patrimonial loss.

¹⁰¹ Neither can they sue for patrimonial loss.

¹⁰² DP No 116, question 13, para 3.50.

close ties of love and affection. As stated above,¹⁰³ the 1976 Act recognises that a death arising from personal injuries is not merely a wrong against the deceased but also a wrong against those who have been closest to the deceased. It follows that a deceased's fiancé(e) is in this category.

2.71 Second, engaged couples should be treated in the same way as cohabiting couples. Many couples do not cohabit prior to marriage for religious and other reasons. As noted by one consultee, by continuing to exclude engaged couples, we would be denying recognition of their grief simply because of the way they approach their commitment.

2.72 The counter-arguments are as follows. First, under section 1(1) of the Law Reform (Husband and Wife) (Scotland) Act 1984¹⁰⁴ "No promise of marriage or agreement between two persons to marry one another shall have effect under the law of Scotland to create any rights or obligations". In other words, engagement is to have no legal effect. Thus if engaged couples were to become entitled to sue under the 1976 Act, this would mark a departure from an established principle of Scots law. The 1984 Act abolished not only the contractual action for breach of promise to marry, but also delictual claims arising from engagement. It would therefore run counter to the policy of the 1984 Act if engaged couples could, merely by virtue of their "status", claim damages for patrimonial and non-patrimonial loss.

2.73 Second, it can be argued that there is no inconsistency if opposite-sex cohabitants continue to be included, and engaged couples remain excluded, from the deceased's immediate family. Before they have title to sue opposite-sex cohabitants must have lived together as husband and wife: simply to have a sexual relationship does not suffice. There is therefore a level of commitment as well as the fact of living in the same household. A close tie of love and affection between persons is not enough to establish title to sue. Thus a couple who intend to set up a home together but without marrying have no title to sue. It is difficult to see how their position differs from that of an engaged couple, given that engagement has no legal effect and that either party can terminate it with impunity should he or she decide not to marry. Moreover, opposite-sex cohabitants have had title to sue under the 1976 Act for twenty years.¹⁰⁵ There does not appear to have been any criticism of this provision. The continued exclusion of engaged couples does no more than maintain the status quo.

2.74 Third, there is the problem of what constitutes engagement. The status of engagement would have to be defined and determined.¹⁰⁶ The 1984 Act does not define "agreement to marry".¹⁰⁷ Engagement is not applicable as a uniform concept to all parties with intention to marry. One consultee commented that it would be difficult to determine the exact point at which engagement takes effect. For example, some couples may consider themselves engaged following an announcement in the newspaper or on the exchange of

¹⁰³ Para 2.8.

¹⁰⁴ (c 15) s 1.

¹⁰⁵ The Administration of Justice Act 1982, (c 53) s 14(4). This section amended para 1 of Sch 1 to the 1976 Act to include opposite-sex cohabitants. Opposite-sex and same-sex cohabitants are also recognised in other areas of Scots law, whereas engaged couples are not. See for example, the Adults with Incapacity (Scotland) Act 2000, (asp 4) and the Mortgage Rights (Scotland) Act 2001, (asp 11).

¹⁰⁶ Also, the commitment between engaged couples can vary enormously, particularly in the view of diverse cultural and religious traditions.

¹⁰⁷ In England and Wales the Family Law Act 1996, (c 27) s 44(2) defines "agreement" and refers to either a gift of a ring or a ceremony.

rings. For others, the simple formulation of marriage plans may be sufficient to constitute engagement. By contrast, cohabitation is usually easier to prove as a matter of fact.

2.75 It is clear that there are strong arguments both for and against engaged couples having title to sue for non-patrimonial loss. However, on balance, we are inclined to the view that we should not make an exception to the policy inherent in the 1984 Act. Accordingly, engaged couples should not be entitled to sue for non-patrimonial (or patrimonial) loss and there should be no change to the 1976 Act in this respect.

2.76 *Uncles and aunts.* At present uncles and aunts of the deceased are not included in the list of the deceased's immediate family in Schedule 1 to the 1976 Act and so they cannot sue for non-patrimonial loss.¹⁰⁸ We asked consultees whether uncles and aunts should be entitled to sue.¹⁰⁹ There was a mixed response from consultees to this question.

2.77 Generally, other jurisdictions do not include uncles and aunts in statutory lists comprising relations entitled to sue for non-patrimonial loss.¹¹⁰ On balance, we do not think that uncles and aunts should be entitled to sue for non-patrimonial damages. Usually uncles and aunts are not part of the same household as the deceased and are less likely than grandparents to have had a major role in the upbringing of the deceased. If for any reason an aunt or uncle accepts responsibility for the upbringing of their niece or nephew and accepts him or her as a child of the family,¹¹¹ then under our recommendation¹¹² the aunt and uncle would be entitled to sue for non-patrimonial loss on that ground. We therefore see no reason to amend the 1976 Act in this respect.

2.78 *Nieces, nephews, and cousins.* At present nieces, nephews and cousins are not included in the deceased's immediate family and therefore they are not entitled to sue for non-patrimonial loss.¹¹³ We asked consultees whether they should be entitled to sue.¹¹⁴ The majority of consultees did not respond to this question. As in the case of uncles and aunts, other jurisdictions do not include nieces, nephews and cousins in statutory lists comprising relations entitled to sue for non-patrimonial loss. Again, for the reasons discussed above, we take the view that these relationships are too remote to constitute membership of the deceased's immediate family and accordingly we see no need to amend the 1976 Act in this respect.

2.79 *De facto grandparents and grandchildren.* Parents of a person who has accepted the deceased as a child of the family (the *de facto* grandparents) are not at present entitled to sue for damages under the 1976 Act. Similarly, a child who has been accepted as a child of the family by a child of the deceased (the *de facto* grandchild) is not entitled to sue for such damages.

¹⁰⁸ However, uncles and aunts can sue for patrimonial loss. See 1976 Act, s 1(3) and Sch 1, para 1(e).

¹⁰⁹ DP No 116, question 7(a), para 3.30.

¹¹⁰ In their report *Claims for Wrongful Death* (Law Com No 263), para 6.31 the Law Commission did not include uncles and aunts in their suggested statutory list of those entitled to claim damages for bereavement. In Ireland, under the Civil Liability Act 1961 s 47(1), uncles and aunts are not "dependants" for the purposes of claims for mental distress consequent upon the death of the deceased.

¹¹¹ For example if the parents of the niece or nephew die.

¹¹² Recommendation 4(a), para 2.41.

¹¹³ However, nieces, nephews and cousins can sue for patrimonial loss. See 1976 Act, s 1(3) and Sch 1, para 1(e).

¹¹⁴ DP No 116, question 7(a), para 3.30.

2.80 We asked consultees whether *de facto* grandparents and *de facto* grandchildren should be entitled to sue for non-patrimonial loss.¹¹⁵ Some consultees thought that they should. Nevertheless, we are not persuaded. We have recommended that grandparents and grandchildren should have title to sue.¹¹⁶ This was for two reasons. First, the fact that the grandparent will often have had a role in the grandchild's care and upbringing and second the likelihood of there being a tie of love and affection between grandparent and grandchild. In the case of the *de facto* relationship, while the first factor may be present, the second is unlikely to be present to the same extent. Moreover, it should not be forgotten that when a child is accepted as a child of the family, the ties that have been formed between the child and the biological grandparents do not necessarily come to an end: indeed, they may be strengthened. The child is therefore less likely to form the same depth of affective relationship with the *de facto* grandparent.

2.81 Our policy is to restrict the right to sue for non-patrimonial damages to those relatives of the deceased who are most likely to have suffered grief and loss because of the close ties of love and affection between them. We think that such a relationship is less likely to exist between the deceased and *de facto* grandparents/*de facto* grandchildren and therefore we see no need to change the 1976 Act in this respect.

Application and commencement

2.82 In our view, the Bill amending the 1976 Act should apply to the Crown as the 1976 Act does. It should also apply in relation to deaths which occur on or after the date of commencement of the provisions. As the Bill amends the 1976 Act and as there is no reason to delay commencement, we think that the Bill should come into force immediately on Royal Assent.

2.83 Accordingly we recommend that:

11. The Bill giving effect to our recommendations should -

(a) apply to the Crown;

(b) apply in relation to deaths which occur on or after the date of commencement; and

(c) come into force on Royal Assent.

(Draft Bill, section 2(2) and (3)).

¹¹⁵ DP No 116, questions 11 and 12, paras 3.44 to 3.46.

¹¹⁶ See para 2.56.

Part 3 List of recommendations

1. Any person who, immediately before the deceased's death, was the spouse of the deceased should continue to be entitled to sue for non-patrimonial loss.

Para 2.15

2. Any person who, immediately before the deceased's death, was the opposite-sex cohabitant of the deceased should continue to be entitled to sue for non-patrimonial damages.

Para 2.20

3. Any person who was a parent of the deceased should continue to be entitled to sue for non-patrimonial loss. For this purpose "parent" should continue to include any person who was -

(a) a biological parent of the deceased, except where the deceased was adopted;

(b) an adoptive parent of the deceased;

(c) a parent of the deceased by virtue of a parental order.

Para 2.41

4. The 1976 Act should be amended to provide that -

(a) any person who had accepted the deceased as a child of the family should be entitled to sue for non-patrimonial and patrimonial loss; and

(b) "parent" (for the purpose of title to sue for non-patrimonial loss) should not include step-parent and parent-in-law.

Para 2.41

5. Any person who was a child of the deceased should continue to be entitled to sue for non-patrimonial loss. For this purpose "child" should continue to include any person who was -

(a) a biological child of the deceased, except where the child was adopted;

(b) an adopted child of the deceased;

(c) a child of the deceased by virtue of a parental order.

Para 2.47

6. Any person who was accepted by the deceased as a child of the family should continue to be entitled to sue for non-patrimonial and patrimonial loss.

Para 2.47

7. The 1976 Act should be amended to provide that "child" (for the purpose of title to sue for non-patrimonial loss) should not include step-child and child-in-law.

Para 2.47

8. The 1976 Act should be amended to provide that –

(a) any person who was the brother or sister of the deceased should be entitled to sue for non-patrimonial loss;

(b) "brother" and "sister" (for the purposes of title to sue for non-patrimonial and patrimonial loss) should include any person who was brought up in the same household and as a child of the same family as the deceased; and

(c) "brother" and "sister" (for the purpose of title to sue for non-patrimonial loss) should not include brother-in-law or sister-in-law.

Para 2.54

9. The 1976 Act should be amended to provide that any person who was the grandparent or grandchild of the deceased should be entitled to sue for non-patrimonial loss.

Para 2.56

10. The 1976 Act should be amended to provide that –

(a) any person who, immediately before the deceased's death, was the same-sex cohabitant of the deceased should be entitled to sue for patrimonial and non-patrimonial loss; and

(b) "same-sex cohabitant" (for the purposes of title to sue for non-patrimonial and patrimonial loss) should mean any person who was living with the deceased in a relationship which had the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife.

Para 2.65

11. The Bill giving effect to our recommendations should -

(a) apply to the Crown;

**(b) apply in relation to deaths which occur on or after the date of commencement;
and**

(c) come into force on Royal Assent.

Para 2.83

Appendix A

DAMAGES (SCOTLAND) BILL

[DRAFT]

An Act of the Scottish Parliament to amend the Damages (Scotland) Act 1976 to further define the relatives of a deceased person who can claim damages.

1 Definition of "relative" and "immediate family"

- (1) The Damages (Scotland) Act 1976 (c.13) is amended as follows.
- (2) In section 1(4) (rights of the deceased's immediate family), for the words "section 10(2) of" there is substituted "Schedule 1 to".
- (3) In section 10 (interpretation)—
 - (a) in subsection (1), before the definition of "personal injuries", there is inserted—

""immediate family", in relation to a deceased person, has the meaning assigned to it by Schedule 1 to this Act;" and
 - (b) subsection (2) is repealed.
- (4) In Schedule 1 (definition of "relative")—
 - (a) in paragraph 1,
 - (i) after sub-paragraph (aa) there is inserted--

"(ab) any person of the same sex as the deceased, who was, immediately before the deceased's death, living with the deceased in a relationship which had the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife;"
 - (ii) in sub-paragraph (c), for the words "was accepted by" there is substituted "had accepted, or was accepted by,";

EXPLANATORY NOTES

The overall effect of section 1 is to amend Schedule 1 to the Damages (Scotland) Act 1976. At present paragraph 1 of Schedule 1 to the Act defines "relative" for the purposes of title to sue for patrimonial loss. A sub-set of those relatives, namely those listed in sub-paragraphs (a), (aa), (b) and (c) are members of the deceased's "immediate family" for the purposes of title to sue for non-patrimonial loss.

Section 1 amends the Schedule so that in future paragraph 1 list the relatives who are entitled to sue for patrimonial loss and a new paragraph 1A lists the members of the immediate family who are entitled to sue for non-patrimonial loss. The individual amendments are explained below.

Subsection (2) amends section 1(4) of the Damages (Scotland) Act 1976 (in these notes referred to as the 1976 Act). Section 1(4) of the 1976 Act provides that any relative of a deceased who is a member of the deceased's immediate family within the meaning of section 10(2) is entitled to claim damages for non-patrimonial loss. Subsection (2) substitutes reference to "Schedule 1" in place of "section 10(2)".

Subsection (3)(a) amends section 10 (interpretation) of the 1976 Act to insert a new reference to the definition of immediate family in Schedule 1 to the 1976 Act.

Subsection (3)(b) repeals section 10(2) of the 1976 Act, as this is no longer necessary following the amendment made by subsection (3)(a).

Subsection (4)(a) amends Schedule 1 to the 1976 Act in relation to the meaning of relative for the purpose of title to sue for patrimonial loss.

Subsection (4)(a)(i) implements recommendation 10 in relation to patrimonial loss. It amends paragraph 1 of Schedule 1 to the 1976 Act to extend the meaning of relative to include the deceased's same-sex cohabitant. The cohabitant must have been cohabiting with the deceased immediately before the deceased's death. The effect of this amendment is to entitle a person's same-sex cohabitant to sue for patrimonial loss on that person's death.

Subsection (4)(a)(ii) implements recommendation 4(a) in relation to patrimonial loss. It amends sub-paragraph (c) of Schedule 1 to the 1976 Act, which provides that relative includes any person who was accepted by the deceased as a child of his family. The effect of the amendment is to extend the meaning of relative to include any person who had accepted the deceased as a child of his or her family. Thus a person who accepted a child as a child of his or her family, for example, a foster parent or step parent, will be entitled to sue for patrimonial loss on the death of that child. Conversely, a child who was accepted by the deceased as a child of his or her family will continue to be entitled to sue for patrimonial loss.

(b) before paragraph 2, there is inserted—

"DEFINITION OF "IMMEDIATE FAMILY"

1A. In this Act, "immediate family" in relation to a deceased person includes—

- (a) any person who immediately before the deceased's death was the spouse of the deceased;
- (b) any person, not being the spouse of the deceased, who was, immediately before the deceased's death, living with the deceased as husband or wife;
- (c) any person of the same sex as the deceased, who was, immediately before the deceased's death, living with the deceased in a relationship which had the characteristics, other than that the persons are of the opposite sex, of the relationship between husband and wife;
- (d) any person who was a parent or child of the deceased;
- (e) any person, not falling within sub-paragraph (d) above, who had accepted, or was accepted by, the deceased as a child of his family;
- (f) any person who was a brother, sister, grandparent or grandchild of the deceased;

but does not include any other person.";

Subsection (4)(b) inserts a new paragraph 1A into Schedule 1 to the 1976 Act. The new paragraph lists those relatives of a deceased who are members of the deceased's immediate family and who therefore are entitled to sue for non-patrimonial damages.

New paragraph 1A(a) implements recommendation 1. It re-enacts paragraph 1(a) of Schedule 1 to the 1976 Act in relation to non-patrimonial loss. It provides that the immediate family includes the deceased's spouse. The spouse must have been married to the deceased immediately before the deceased's death. A former spouse is not included. The reference to spouse includes spouses of a polygamous marriage.

New paragraph 1A(b) implements recommendation 2. It re-enacts paragraph 1(b) of Schedule 1 to the 1976 Act in relation to non-patrimonial loss. It provides that the immediate family includes the deceased's opposite-sex cohabitant. The cohabitant must have been living with the deceased as husband and wife immediately before the deceased's death.

New paragraph 1A(c) implements recommendation 10 in relation to non-patrimonial loss. It amends the 1976 Act to allow same-sex cohabitants to sue for non-patrimonial loss. The same-sex cohabitant must have been living with the deceased immediately before the deceased's death in a relationship which had the characteristics of the relationship of husband and wife, apart from the fact that a husband and wife are of the opposite sex.

New paragraph 1A(d) implements recommendations 3 and 5. It re-enacts paragraph 1(b) of Schedule 1 to the 1976 Act in relation to non-patrimonial loss. It provides that the immediate family includes the deceased's parent or child.

New paragraph 1A(e) implements recommendations 4(a) in relation to non-patrimonial loss and 6. It re-enacts, with an amendment, paragraph 1(c) of Schedule 1 to the 1976 Act in relation to non-patrimonial loss. Thus any person who was accepted by the deceased as a child of the family can continue to sue for non-patrimonial loss. It also amends the 1976 Act to provide that immediate family includes any person who accepted the deceased as a child of his family, thus enabling such persons to sue for non-patrimonial loss. The provision has been drafted in gender specific language to correspond with the 1976 Act. However, as a matter of statutory construction the reference to "his" includes a reference to "her".

New paragraph 1A(f) implements recommendations 8(a) and (b) and 9. It provides that immediate family includes the deceased's brother, sister, grandparent or grandchild who thus are entitled to sue for non-patrimonial loss. By contrast with paragraph 1(d) of Schedule 1 in relation to patrimonial loss, this provision refers to "grandparent" and "grandchild". Remoter ascendants and descendants are not included and so cannot sue for non-patrimonial loss.

(c) in paragraph 2—

- (i) for the words "the foregoing paragraph", there is substituted "paragraphs 1 and 1A above";
- (ii) in sub-paragraph (a), the words "any relationship by affinity shall be treated as a relationship by consanguinity;" and "and the stepchild of any person shall be treated as his child; and" are repealed;
- (iii) after sub-paragraph (b), there is inserted—

"(c) any person who was brought up in the same household and as a child of the same family as the deceased shall be treated as the brother or sister of the deceased."; and

(d) after paragraph 2, there is inserted—

"3. In deducing any relationship for the purpose of paragraph 1 above, any relationship by affinity shall be treated as a relationship by consanguinity; and the stepchild of any person shall be treated as his child."

2 Short title, application to the Crown and commencement

- (1) This Act may be cited as the Damages (Scotland) Act 2002.
- (2) This Act binds the Crown.
- (3) This Act shall have effect in relation to deaths occurring on or after its commencement.

Subsection (4)(c) amends paragraph 2 of Schedule 1 to the 1976 Act.

Subsection (4)(c)(i) amends paragraph 2 of Schedule 1 to substitute reference to "paragraph 1 and 1A above" in place of "the foregoing paragraph". As a result paragraph 2 applies to both paragraph 1 of the Schedule (definition of "relative" for the purpose of title to sue for patrimonial loss) and to the new paragraph 1A of the Schedule (definition of "immediate family" for the purpose of title to sue for non-patrimonial loss).

Subsection (4)(c)(ii) implements recommendations 4(b), 7 and 8(c). It repeals part of paragraph 2(a) of Schedule 1 to the 1976 Act. However, this provision is re-inserted for the purpose of title to sue for patrimonial loss, by virtue of subsection (4)(d) below.

Subsection (4)(c)(iii) implements recommendation 8(b). It amends paragraph 2 of Schedule 1 to the 1976 Act to add a new sub-paragraph (c). The new sub-paragraph (c) provides that any person who was brought up in the same household as the deceased and as a child of the same family as the deceased shall be treated as the brother or sister of the deceased.

Subsection (4)(d) adds a new paragraph to Schedule 1 to the 1976 Act. The new paragraph 3 reinstates the provision of paragraph 2(a) with regard to relationships by affinity and step-children, which subsection (4)(c)(ii) of the Bill repeals. Taken together the effect of these two provisions is that relatives of the deceased by affinity and step-children are not entitled to sue for non-patrimonial loss, but continue to be entitled to sue for patrimonial loss.

Section 2

This section implements recommendation 11. It provides for the short title and application of the Act. No specific provision is made for commencement because the Bill is intended to come into force on Royal Assent. It will be noted that the amendments to the 1976 Act made by the Bill are only to apply to deaths that occur on or after commencement and not to actions which have started but have not been completed. The Bill applies to the Crown in the same way as the 1976 Act does.

Appendix B - Title to sue for non-patrimonial loss under the Damages (Scotland) Act 1976

"Relative" ¹	1976 Act - at present	1976 Act – following our Bill ²
Surviving spouse ³	Yes	Yes
Former spouse	No	No
Surviving opposite-sex cohabitant	Yes	Yes
Surviving same-sex cohabitant	No	Yes
Biological parent and child ⁴	Yes	Yes
Adoptive parent and child	Yes	Yes
Parent and child by virtue of a parental order	Yes	Yes
Step-parent and step-child	Yes	No
Any person who accepted the deceased as a child of his or her family	No	Yes
Any person who was accepted by the deceased as a child of his or her family	Yes	Yes
Parent-in-law and child-in-law	Yes	No
Other relations by affinity	No	No
Brother and sister	No	Yes
<i>De facto</i> brother and sister	No	Yes
Grandparent and grandchild	No	Yes
Further ascendant and descendant	No	No
<i>De facto</i> grandparent and grandchild	No	No
Uncle, aunt, niece, nephew and cousin	No	No

¹ Relationships of the half blood are included.

² See Appendix A draft Damages (Scotland) Bill 2002.

³ Including the surviving spouses to a valid polygamous marriage.

⁴ Including a parent and child by virtue of the Law Reform (Parent and Child) (Scotland) Act 1986, (c 9) s 1(1); but excluding a parent and child where the child has been adopted by another. See the Adoption (Scotland) Act 1978, (c 28) s 39.

Appendix C - Consultees who submitted written comments On Discussion Paper No 116

Association of Personal Injury Lawyers

Mrs Louise Chisholm

Faculty of Advocates

Rhoda Grant MSP

Law Society of Scotland

Professor Kenneth McK Norrie

Outright Scotland

Royal Faculty of Procurators in Glasgow

Scottish Law Agents Society

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John B Stirling WS

Elaine E Sutherland