Civil Litigation/A NHS Ayrshire and Arran
Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill FM

It is very unusual for NHS Ayrshire & Arran to be able to reclaim any expenses from a pursuer where the Board is successful in defending a claim since these tend to be withdrawn or abandoned on a no expenses due to or by either party basis. On this basis, the cost implications for NHS Ayrshire & Arran of the proposed changes are minimal.

The impact of qualified one way cost shifting however is to place the greater burden on the health board and to increase the likelihood of personal injury cases for clinical negligence claims against the health board which would further increase the trend of more litigious claims being raised.

The financial memorandum mentions that advocates are expressly forbidden by the faculty of advocates from entering into DBAs. It would be important for the legislation not to cut across professional views and Ayrshire & Arran would agree that there should be restrictions on third party expenses. An analysis by Ayrshire & Arran of settlements over the last 4 years would indicate that in around a third of settlements, the expenses for the third party solicitor exceed the amount received by the claimant in damages.

The NHS does not take out insurance against claims. The NHS in Scotland has a risk sharing arrangement across all boards. Para 56 of the Financial Memorandum is therefore not correct with respect to the NHS where it says, “most defenders will have the backing of insurance company personal injury actions”.

I trust this information is of assistance to the Finance and Constitution Committee in their deliberations.