The Damages (Scotland) Bill is a members’ bill which was introduced in the Scottish Parliament on 1 June 2010 by Bill Butler MSP. Its purpose is to implement the recommendations of the Scottish Law Commission in its report entitled Damages for Wrongful Death (Scottish Law Commission 2008).

This briefing outlines the background to the Bill, the current law on damages for wrongful death, the key policy issues associated with the Bill and some of the possible financial implications of the Bill. Note that because of the timescale associated with the Scottish Government’s (2010a) current consultation on the subject matter of the Bill and likewise the timescale associated with the Justice Committee’s call for written evidence on the Bill it has not been possible to refer to the views expressed by interested parties during these processes in this briefing. However, the key points made by respondents during Bill Butler’s original consultation are referred to in this briefing.
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EXECUTIVE SUMMARY

Bill Butler MSP introduced his Member’s Bill, the Damages (Scotland) Bill (plus accompanying documents), in the Scottish Parliament on 1 June 2010. Its purpose is to implement the recommendations of the Scottish Law Commission (SLC) in its report entitled Damages for Wrongful Death (Scottish Law Commission 2008).

The Scottish Government supports in principle the broad objectives of the Bill. It recently launched its own consultation (Scottish Government 2010a) on detailed aspects of the Bill in order “to further probe the areas where significant concerns have been raised” (Scottish Government 2010c).

THE CURRENT LAW

An introduction to the law of damages

In Scots law, when an individual suffers an injury or contracts a disease as a result of the actions or omissions of another person, or as the result of the acts and omissions of a legal entity such as a company, damages can be claimed from the wrongdoer. Damages are financial compensation for the losses incurred as a result of the injury or disease. Damages awarded for personal injury are intended to restore the victim to the position he or she was in had the wrongful act or omission not occurred, to the extent that a financial award can achieve that aim. The damages awarded are not intended to penalise the wrongdoer.

The law makes specific provision for cases of personal injury which result in premature death, whether that death is immediate or more protracted. The Damages (Scotland) Act 1976 (c 13) (‘the 1976 Act’) is the main piece of legislation addressing damages for wrongful death.

Damages for wrongful death can be divided into three parts: 1) the victim’s rights; 2) the executor’s rights and 3) the relatives’ rights.

The victim’s rights

The victim can claim damages for ‘patrimonial losses’, ie economic losses, such as loss of earnings, and for ‘non-patrimonial losses’, ie non-economic losses, such as pain and suffering experienced. A claim can be made for losses incurred up to the date of the ‘proof’, ie the main court hearing, as well as for future patrimonial and non-patrimonial losses.

Under the Administration of Justice Act 1982 (c 53) (‘the 1982 Act’), victims are also entitled to claim for the cost of necessary services provided to them by relatives (section 8), and for the value of services that (had it not been for their injuries) they would have provided to their relatives (section 9). In both cases these may be claimed only until the expected date of death, not the date the individual could have been anticipated to die had he or she not experienced the injury or disease in question (the latter being referred to as ‘the notional date of death’). (The proposal to amend section 9 of the 1982 Act to include losses up to the notional date of death is one of the least controversial parts of the Bill (section 13).)
The executor's rights

If the individual dies before initiating or completing his or her claim for damages, the victim’s right to claim damages transmits to the executor of his or her estate, i.e., the person in law responsible for gathering in and distributing the deceased’s assets on death. The executor may claim for patrimonial loss and non-patrimonial loss, as well as making the claims regarding personal services under the 1982 Act referred to above. However, unlike the victim, the executor can only claim for patrimonial and non-patrimonial losses incurred up to the actual date of death, not for losses incurred up to the notional date of death. This is intended to avoid 'double compensation' of relatives, who may inherit (all or part of) an award of damages for loss up to the date of death made to the victim’s estate under the law of succession and also may be entitled to make their own claim under the 1976 Act (see below).

The relatives’ rights

The victim’s relatives may have a claim for damages for 1) the loss of the victim’s financial support (a form of patrimonial loss); 2) non-patrimonial loss sustained, such as grief and sorrow caused by the death; and 3) by virtue of the 1982 Act, personal services which the deceased would have provided had he or she lived. However, subject to an exception created by the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18) relating to victims who are mesothelioma sufferers, the general rule is that if a court has awarded damages to the victim before his or her death or he or she had otherwise received a final settlement in respect of this aspect of his or her claim, this has the effect of precluding any subsequent claim by the victim’s relatives.

KEY ISSUES RELATING TO THE BILL

Much of the Bill is a re-statement of the existing law of damages for wrongful death. This briefing considers five of the main policy issues associated with the Bill where substantive changes to the existing law are proposed.

The victim’s claim: assessing reasonable living expenses

In the first place, in relation to the victim’s claim, the Bill proposes changes to the way the victim’s claim for future patrimonial loss is calculated. At present, the approach usually adopted by the courts is to make a deduction from the victim’s projected future income for his or her reasonable living expenses over the period the victim would have lived (but for his or her injuries), with this latter figure being calculated on a case-by-case basis. However, the Bill proposes that the victim’s reasonable living expenses should be taken to be 25% of the victim’s projected future net income. The stated policy aim of introducing a fixed rule is to reduce the scope for expense and delay associated with negotiation around this issue.

A majority of the respondents to Mr Butler’s original consultation were supportive of the proposed change but several respondents suggested that it would violate the fundamental principle that a victim should only be compensated for the loss suffered.
The relatives’ claim: withdrawal of certain relatives’ existing rights to claim damages for the loss of financial support

The Bill proposes a change to the definition of ‘relative’ restricting the categories of individual who can currently claim damages for patrimonial loss. The SLC advanced several policy reasons for this proposed change, including that the current definition had become overly complicated and anachronistic. Whilst some respondents to Mr Butler’s consultation commenting on this issue were supportive of the proposed change, it did not attract significant support. For example, several of the respondents opposing the change (or expressing reservations about it) suggested that there are examples of relatives outside a person’s immediate family caring devotedly for the victim and that these people would suffer financial loss in future because they would fall outside the narrower definition of the term ‘relative’ proposed. Subject to consideration of responses to its own consultation, the Scottish Government is currently minded to reject the SLC recommendation underpinning this part of the Bill.

The relatives’ claim: calculation of the loss of financial support sustained

The Bill also proposes changes to the way the relatives’ claim for loss of financial support is calculated. In particular, the Bill provides that where the person making the claim is the deceased’s spouse, civil partner, cohabitant or dependent child, the deceased is taken to have used 75% of his or her net income to support his or her family and the income of the person making the claim is to be ignored entirely. In contrast, the current practice is to have regard to a formula laid down in the case of Brown v Ferguson (1990 SLT 274) which involves considering the income of both the deceased and the person making the claim.

The policy rationale for the proposed change is to introduce a method of calculation that reflects contemporary family structures, as opposed to the ‘traditional family’ where one party was the breadwinner and the other party responsible for caring for any children of the family and running the home. The change received majority support on consultation. However, some respondents to Mr Butler’s consultation expressed concerns that a fixed rule violated the fundamental principle that compensation should only be for the actual loss suffered. Some respondents also suggested that complete disregard for the income of the person making the claim could lead to overcompensation of that person in some instances.

The relatives’ claim: use of a ‘multiplier’ in calculating damages for loss of financial support

Another change contained within the Bill to the method of calculation for loss of financial support relates to the use of a multiplier in calculating the claim. Compensation for future loss of earnings is currently based on the product of 1) the victim’s net earnings at the time of the injury and 2) a ‘multiplier’, ie a figure taken from tables of actuarial data known as Ogden Tables. At present a multiplier is applied from the date of death, not from the date of the proof (ie the date of the main court hearing). However, section 7 of the Bill creates a distinction between past loss and future loss and further provides that a multiplier should be applied from the date of the court order awarding damages in respect of future loss only.

This aspect of the Bill received a mixed reception from those responding to Mr Butler’s consultation on this issue. Those supporting the proposed change typically did so because they agreed with the SLC that the current approach to the use of multipliers is not correct. Loss between the date of death and the date of the proof, the SLC suggested, is by its nature known at the date of proof and so can be properly quantified without the use of a multiplier. Multipliers are intended to create a discount in the sum awarded to represent future uncertainties.
Consequently it was argued that their use from the date of death was inappropriate and may result in under-compensation of the surviving relative. Respondents opposing the change did so for various reasons including that it may still be appropriate to apply a multiplier from the date of death as the uncertainty as to how long the deceased would have lived (but for the injury or disease giving rise to the claim) is an uncertainty which prevails from the date of death, not from the date of the court hearing.

The relatives’ claim: exemption of mental illness

Section 4 of the Bill provides that a relative’s claim for damages for non-patrimonial loss should be called a ‘grief and companionship award’ and that such an award should be in respect of emotions ordinarily experienced as a consequence of the death of a loved one. Consequently, section 4 removes any doubt existing in the current law as to whether damages in respect of mental illness suffered as a result of the death (as well as any associated economic loss) can be claimed in the context of damages for wrongful death. It clarifies that, instead, a separate claim would have to be made.

This proposed change received a mixed reaction in those responding to Mr Butler’s consultation on this issue. A number of respondents who were critical of this aspect of the Bill pointed to difficulties in practice of distinguishing severe grief reactions from mental illness and suggested that what was proposed might unfairly penalise those who suffered from severe grief reactions. Several respondents also suggested that a duplication of court actions should be avoided where possible for various reasons. Those supporting the proposed change did so for reasons including that there were separate rules applicable to damages actions for psychiatric injury as opposed to damages for wrongful death and, therefore, it was more appropriate to raise two separate court actions.

FINANCIAL IMPLICATIONS OF THE BILL

Neither the Financial Memorandum to the Bill, nor the recent Scottish Government consultation paper on the SLC report, anticipate that there will be an increase in the number of cases brought in respect of damages for wrongful death as a result of implementing the recommendations of the SLC report.

However, both Mr Butler and the Scottish Government anticipate that there will be an increase in the level of damages awarded for loss of financial support in cases in which the surviving spouse, civil partner or cohabitant has his or her own income. The Scottish Government anticipates that the proposed change will be particularly beneficial for survivors who are relatively high earners.

The Financial Memorandum suggests that there will be potential savings associated with the enhanced legal clarity anticipated as a result of the Bill. The Scottish Government takes the view that these savings will be “ongoing but limited” (Scottish Government 2010b, para 35).

A number of respondents to Mr Butler’s consultation either saw potential savings associated with enhanced legal clarity or suggested the proposals would be cost neutral for the same reason. However, several respondents were more cautious. For example, the Association of British Insurers (ABI) and the Forum of Insurance Lawyers (FOIL) suggested there was a need for further financial assessment of the impact of the proposals. The Forum of Scottish Claims Managers thought that there would be costs associated with the Bill that would be passed on to consumers in a variety of ways. None of the respondents were able to provide detailed costings in relation to their comments on the financial implications of the Bill.
INTRODUCTION AND BACKGROUND

The Damages (Scotland) Bill (plus accompanying documents) was introduced in the Scottish Parliament on 1 June 2010 by Bill Butler MSP. The purpose of this Member’s Bill is to implement the recommendations of the Scottish Law Commission (SLC) in its report entitled Damages for Wrongful Death (Scottish Law Commission 2008).

Mr Butler consulted (Butler 2009) on his draft proposal for a member’s bill between 3 August to 26 October 2009 and a Summary of Consultation Responses (Butler 2010a) was published in January 2010. The actual consultation responses are also available online (Butler 2010b). His final proposal, lodged on 13 January 2010, received support from a total of 33 MSPs from all five parties represented in the Parliament.¹

The Scottish Government supports in principle the broad objectives of the Bill. Its original intention was to bring forward a programme of reform integrating the recommendations made in the SLC’s report on Damages for Wrongful Death (hereafter ‘the SLC report’), with the recommendations made in two other SLC reports, namely Damages for Psychiatric Injury (Scottish Law Commission 2004) and Personal Injury Actions: Limitation and Prescribed Claims (Scottish Law Commission 2007b). However, it has now decided to address the issue of damages for wrongful death first, whilst progressing with the remainder of the programme of work “as soon as possible” (Scottish Government 2010c). On 8 July 2010 the Scottish Government launched its own consultation (Scottish Government 2010a) on detailed aspects of the issues covered by the Bill in order “to further probe the areas where significant concerns have been raised” (Scottish Government 2010c).

The remainder of this briefing outlines the current law on damages for wrongful death and considers the key policy issues associated with the Bill, as well as the financial implications of the Bill. Note that because of the timescale associated with the Scottish Government’s (2010a) current consultation exercise and likewise the timescale associated with the Justice Committee’s call for written evidence on the Bill it has not been possible to refer to the views expressed by interested parties during these processes into this briefing. However, the key points made by respondents during Bill Butler’s original consultation are referred to in this briefing.

THE CURRENT LAW ON DAMAGES FOR WRONGFUL DEATH

AN INTRODUCTION TO THE LAW ON DAMAGES

In Scots law, when an individual suffers an injury or contracts a disease as a result of the actions or omissions of another person, or as the result of the acts and omissions of a legal entity such as a company, damages can be claimed from the wrongdoer. Damages are financial compensation for the losses incurred as a result of the injury or disease.

The damages awarded in Scots law are intended to restore the victim to the position he or she was in had the wrongful act or omission not occurred, to the extent that a financial award can achieve that aim. The damages awarded are not intended to penalise the wrongdoer.

¹ This is considerably more than the minimum threshold required by the Parliament’s standing orders. Under Rule 9.14.12(a), a proposal requires 18 supporters from at least half of the parties (or groups) represented in the Parliamentary Bureau – of which there are currently four.
In practice the actual financial costs associated with the defender’s liability may fall on other parties. For example, they may be met by the defender’s insurer.

The current law on damages is a mixture of case law (ie the law developed by the reported decisions of the courts) and legislation.

Damages may be awarded by the civil courts in Scotland or negotiated between the victim and the wrongdoer against the backdrop of the legislation and case law that would have been applied by the courts. In personal injury cases in Scotland the person raising the action is referred to as ‘the pursuer’ and the person defending the action ‘the defender’. (In England and Wales the terms ‘claimant’ and ‘defendant’ are used).\(^2\)

Where a claim for damages for personal injury cases is made, it is the practice to divide it into various ‘heads’ of damages to assist in quantifying the claim. A distinction is made between ‘patrimonial loss’ and ‘non-patrimonial loss’. Patrimonial loss consists of economical loss incurred as a result of the injury, for example loss of earnings and reasonable medical expenses incurred. Non-patrimonial loss takes into account the emotional distress, pain and suffering experienced. Non-patrimonial loss is also sometimes known as ‘solatium’.\(^3\) A distinction is also made between losses which occurred up to the date of the main court hearing (‘the proof’) and losses which will be incurred in the future (‘future losses’).

The law makes special provision for cases of personal injury which result in premature death, whether that death is immediate or more protracted. The Damages (Scotland) Act 1976 (c 13) (‘the 1976 Act’), the focus of the SLC report and the Bill, is the main piece of legislation addressing damages for wrongful death. Part 2 of the Administration of Justice (Scotland) Act 1982 (c 53) (‘the 1982 Act’) makes provision on damages in respect of personal injuries more generally, although some provisions are also relevant to the law of damages for wrongful death. The Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18) makes specific provision in respect of the law of damages applicable to the relatives of people suffering from mesothelioma (a form of terminal cancer almost always associated with asbestos exposure).

**DAMAGES FOR WRONGFUL DEATH**

The law relating to damages for wrongful death can be divided into three parts: 1) the victim’s rights; 2) the executor’s rights and 3) the relatives’ rights.

**The victim’s rights**

*Patrimonial loss*

The victim can claim for patrimonial losses up to the date of proof as well as future losses. The 1976 Act provides that when quantifying future patrimonial loss, the court must assume that the victim will live to the date to which he or she would have been expected to live if he or she had not suffered the injuries. This date is known as the ‘notional date of death’. This allows the victim to recover damages for the ‘lost period’, which is the period between the victim’s likely

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\(^2\) For a general introduction to the civil court system in Scotland see the SPICe Briefing entitled *The Scottish Civil Court System* (Harvie-Clark 2009).

\(^3\) Non-patrimonial loss is only referred to as ‘solatium’ in the context of the victim’s claim for damages for wrongful death. In the context of the relatives’ claim for loss of financial support by the deceased it is not referred to as ‘solatium’.
date of death as a result of his or her injuries and his or her notional date of death (1976 Act, section 9(2)(a)).

Various conventions have been developed by the courts to assist them in calculating future patrimonial loss, the most important of these conventions relates to calculation of future loss of earnings (see further below under ‘Key Issues Relating to the Bill’).

**Personal services**

Under the 1982 Act, victims are entitled to claim for the cost of necessary services provided to them by relatives (section 8), and for the value of services that (had it not been for their injuries) they would have provided to their relatives (section 9). In both cases these may be claimed only until the expected date of death, not the notional date of death. In relation to a successful claim under section 8, the victim is obliged to account to the relatives for any damages recovered.

**Non-patrimonial loss**

A victim can claim damages for any pain and suffering experienced (none will be experienced if death is instantaneous) and for distress and anxiety suffered due to the knowledge that his or her life expectancy has been reduced by the injuries. The victim must, however, be aware, or be likely to become aware, of his or her shortened life expectancy in order to claim these damages (1976 Act, section 9A). Damages for non-patrimonial losses can be claimed for past and future losses.

**The executor’s rights**

When a victim dies as a consequence of his or her personal injuries, he or she may not have survived long enough to have been awarded damages or even to have raised a claim. If the individual dies before initiating or completing his or her claim for damages, the victim’s right to claim damages transmits to the executor of his or her estate, ie the person in law responsible for gathering in and distributing the deceased’s assets on death. The victim’s executor may either continue a claim initiated by the victim or initiate a claim on behalf of the victim’s estate (1976 Act, sections 1, 2 and 2A). Any damages awarded to the victim’s estate will be distributed in accordance with the law on succession (the area of law which determines what happens to an individual’s assets on death) and so may pass (in whole or in part) to the victim’s relatives.

Under section 2(1) of the 1976 Act the executor may claim for patrimonial loss and non-patrimonial loss, as well as making the claims under sections 8 and 9 of the 1982 Act referred to above under ‘Personal services’. However, in relation to patrimonial and non-patrimonial loss, unlike the victim, the executor can only claim for losses incurred up to the actual date of death, not losses incurred during the lost period (1976 Act, sections 2(2) and (3)). This is intended to avoid ‘double compensation’ of relatives, who may inherit (all or part of) an award of damages for losses incurred up to the date of death made to the victim’s estate and also may be entitled to make their own claim for loss of financial support during the lost period (see below) (Scottish Law Commission 2008 para 2.13).

**The relatives’ rights**

Where a victim dies from his or her personal injuries, the victim’s relatives may have a claim for damages for 1) the loss of the victim’s financial support (a form of patrimonial loss); 2) non-patrimonial loss sustained, such as grief and sorrow caused by the death; and 3) personal
services which the deceased would have provided had he or she lived (1976 Act, sections 1 and 10 and schedule 1).

For patrimonial loss, ‘relative’ is defined very widely, including, for example, a former spouse or civil partner (1976 Act, section 10(1) and schedule 1). However, as an actual loss of financial support must be proved by most categories of relatives, in practice the claim is limited to those relatives who were actually financially dependent on the deceased. For non-patrimonial loss the right extends to a smaller group of relatives referred to as the deceased’s ‘immediate family’ (1976 Act, sections 1(2), 10(2) and schedule 1).

The relatives’ rights to claim for patrimonial and non-patrimonial loss are a distinct right of compensation and not a transmission of the victim’s rights to them (1976 Act, section 4). However, the general rule is that if a court has awarded damages to the victim before his or her death, or he or she has otherwise received a final settlement in respect of this aspect of his or her claim, this has the effect of precluding any subsequent claim by the victim’s relatives (1976 Act, section 4).

Section 1 of the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 (asp 18) amended the 1976 Act to create an exception to the general rule where the victim’s personal injury is mesothelioma (a terminal cancer where the victim’s life expectancy is typically around 15 months). In this instance, the victim’s immediate family may also have a claim for non-patrimonial losses incurred after the victim’s death, even if a court has awarded damages to the victim or he or she has otherwise settled his or her claim prior to death (1976 Act, sections 1(2A) and (2B)). (Prior to the 2007 Act, sufferers faced the difficult choice of pursuing their claims for damages whilst alive, or refraining from doing so in order to allow their relatives to claim what was typically a much higher award after the victim’s death.)

KEY ISSUES RELATING TO THE BILL

Much of the Bill is a re-statement of the existing law of damages for wrongful death. This briefing considers five of the main policy issues associated with the Bill where substantive changes to the existing law are proposed.

Other than these five policy issues, there is one further substantive change proposed by the Bill which is the introduction of a right to damages in relation to gratuitous personal services which, had it not been for injury-induced death, would have been provided by the victim to his or her relatives during the lost period (section 13 of the Bill implementing recommendation 5(b) of the SLC report). As mentioned above, at present it is only possible to claim such damages up to the expected date of death, not the notional date of death, thus excluding the lost period (1982 Act, section 9). The change proposed was not found to be controversial on consultation by Mr Butler and the Scottish Government takes the view that “a persuasive and straightforward case has been made” (Scottish Government 2010a, para 2.12). Consequently, this proposed change is not considered further in this briefing.

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4 This requirement to show an actual loss of financial support does not usually apply to the deceased’s spouse, civil partner or dependent children (Brown v Ferguson 1990 SLT 274).
THE VICTIM’S CLAIM: ASSESSING REASONABLE LIVING EXPENSES DURING THE LOST PERIOD

The current law

As mentioned above, when quantifying the victim’s claim for future patrimonial loss, the court is required to assume that the victim will live to the date when he or she would have been expected to live if he or she had not suffered the injuries (the notional date of death) allowing the victim to recover damages for the period between the victim’s expected date of death and his or her notional date of death (the lost period) (1976 Act, section 9(2)(a)).

After the victim’s likely income is calculated for the lost period the court must make a deduction for the victim’s reasonable living expenses during that period (1976 Act, s 9(2)(c)). The policy aim of this provision is to avoid injured parties being either over or under-compensated. There are no reported Scottish cases on how an assessment of reasonable living expenses should be made. At present, personal living expenses are calculated on a case-by-case basis, so that in principle the most extravagant individuals would incur the greatest deductions for living expenses (Scottish Government 2010a, para 3.06).

The change proposed

In accordance with recommendation 4 of the SLC report, the Bill provides that the victim’s reasonable living expenses should be taken to be 25% of the victim’s net income during that period (section 1(6)(c); Scottish Law Commission 2008, recommendation 4). The stated policy aim of introducing a fixed rule is to reduce the scope for expense and delay associated with negotiation around this issue (Scottish Law Commission 2008, paras 3.8–3.9). However, the SLC did also observe that the absence of Scottish reported cases in the area suggested that “these difficulties may be more theoretical than real” (Scottish Law Commission 2008, para 3.9).

Views expressed on this issue

When Mr Butler consulted on the draft Bill, 10 out of the 14 respondents were supportive of the change proposed in the Bill, including the Faculty of Advocates, UNITE, the STUC, the Association of Personal Injury Lawyers (APIL) and Forum of Scottish Claims Managers. Three out of 14 respondents were against the change (the Law Society of Scotland, the Forum of Insurance Lawyers (FOIL) and Peter McCormack, an advocate). 1 respondent (the Association of British Insurers (ABI)) outlined the pros and cons of the change without expressing a firm view for or against change (Butler 2010b).

The main reasons given by the respondents supporting the proposed change were that a fixed rule would reduce delay in settling claims and bring down legal costs. Several respondents (including the STUC and APIL) also referred to the need under the current system for an in-depth inquiry into people’s lifestyles and the distress this caused at a time of severe emotional strain.

Respondents opposing the proposed change suggested that it would violate the fundamental principle that a victim should only be compensated for the loss suffered and that a fixed rule might result in over-compensation or under-compensation in a given instance. FOIL challenged

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5 ABI was however more overtly critical of the related proposal of having a fixed rule for assessing the relatives’ claim for loss of financial support (see later in this briefing for a discussion of this proposal).
the SLC’s contention in its report (Scottish Law Commission 2008, para 3.36) that families typically cannot amass sufficient evidence of how much the deceased spent on himself or herself (which the SLC suggested then led to unnecessary litigation or settlement of the claim at too low a level). FOIL referred to the absence of reported Scottish cases as suggesting that this area did not present a difficulty in practice during settlement negotiations (Butler 2010b).

At the time of Mr Butler’s consultation the Law Society of Scotland (Butler 2010b) identified this issue as its “main area of concern” in the Bill, suggesting that “such a hard-and-fast rule may not be appropriate for complex or high-value cases” but suggested that the proposed rule could be acceptable to them if it were possible for the 25% figure to be challenged where exceptional cause can be shown. In other words, the 25% figure would be a presumption not a rule which could be rebutted if suitable grounds were established.

The Scottish Government (2010a, para 3.08), in its recent consultation on the SLC report, noted that the 25% fixed rule had not been consulted on in the SLC’s earlier Discussion Paper on the topic (Scottish Law Commission 2007a). It acknowledged the tension between the policy objective of achieving a quick, low cost settlement of a victim’s claim and the principle of avoiding over-compensation or under-compensation in a given instance and sought further views on the issue (Scottish Government 2010a, para 3.10–3.11).

THE RELATIVES’ CLAIM: WITHDRAWAL OF CERTAIN RELATIVES’ EXISTING RIGHT TO CLAIM DAMAGES FOR LOSS OF FINANCIAL SUPPORT

The current law

As discussed above, the victim’s relatives have a right to claim damages for patrimonial loss arising from loss of his or her financial support (1976 Act, section 1(3)). ‘Relative’ is defined very widely, including, a former spouse or civil partner, as well as ‘in-laws’, aunts and uncles, nieces and nephews and cousins (1976 Act, section 10(1) and schedule 1). However, as an actual loss of financial support must be proved by most categories of relatives, 6 so in practice the claim is limited to those relatives who were actually financially dependent on the deceased.

For non-patrimonial loss the right extends to a smaller group of relatives referred to as the deceased’s ‘immediate family’ (1976 Act, sections 1(4) and 10(2)).

The change proposed

In accordance with recommendation 15 of the SLC report, section 14 of the Bill sets out a definition of the term ‘relative’ which means that the right to sue for patrimonial loss would be restricted to a more limited group of relatives of the deceased than is the case at present. Specifically, those included in the definition of ‘relative’ are as follows:

- a spouse, a civil partner or a cohabitant
- a parent or an individual who accepted the deceased as a child of that individual’s family
- a child or an individual who was accepted by the deceased as a child of the deceased’s family
- a brother or sister or individuals brought up in the same household as the deceased and accepted as a child of the family in which the deceased was a child

6 This requirement to show an actual loss of financial support does not apply to the deceased’s spouse, civil partner or dependent children (Brown v Ferguson 1990 SLT 274).
• a grandparent or grandchild

All the above mentioned relationships include relationships of ‘half blood’ to the deceased (section 14(2)).

A number of policy justifications for this change have been advanced by the SLC. In the first place, it said that the current definition of ‘relative’ is too wide, and presented a danger of including business not domestic relationships. Secondly, the definition, it argued, has become anachronistic. For example, it suggested that the inclusion of former spouses or civil partners is at odds with the ‘clean break’ approach favoured by the current law of divorce and dissolution of civil partnerships. Thirdly, it takes the view that the current definition (which has been amended several times since 1976) is overly complicated and ambiguous. Finally, the SLC believes that the fact that few claims for damages for patrimonial loss are raised by relatives who are not members of the deceased’s immediate family justifies the new narrower definition (Scottish Law Commission 2008, paras 3.56–3.57).

**Views expressed on this issue**

Nine out of the 14 respondents to Mr Butler’s consultation on the draft Bill commented on this issue. Three of those respondents commenting were supportive of the change proposed (ABI, APIL and the Forum of Scottish Claims Managers), 4 respondents did not support it (FOIL, the Faculty of Advocates, the STUC and Dr Peter Semple) and a further 2 respondents expressed reservations about it (Thompsons Solicitors and UCATT) (Butler 2010b).

Several of the respondents opposing the change (or expressing reservations about it) suggested that there are examples of relatives outside a person’s immediate family caring devotedly for the victim and these respondents expressed concern that such people would in future suffer financial hardship because they fell outside the new narrower definition of ‘relative’ (Butler 2010b).

Several respondents opposing the change noted that the requirement on the relative in question to prove loss operated to limit such claims and, consequently, there was no need for the law to draw an “arbitrary line” or take a “one size fits all approach” (Butler 2010b).

The Faculty of Advocates (Butler 2010b) suggested that, far from being anachronistic, the current definition of ‘relative’ reflects the less structured nature of family relationships in today’s society. In relation to former spouses or civil partners it commented:

“One can readily imagine a former spouse or civil partner remaining subject to a degree of financial support for many years following separation and it is not immediately obvious to us why, having established that such support existed, that individual should lose out because he or she does not fall within narrow familial parameters” (Butler 2010b)

The Faculty of Advocates (Butler 2010b) also disagreed with the SLC’s assessment of the current definition as overly complicated or ambiguous.

Two out of the 3 respondents supporting this provision of the Bill did not give reasons for doing so. APIL (Butler 2010b) commented that, in its view, the wording of the provision was sufficiently wide to provide financial support to those who had been supported by the deceased prior to his or her death.

In its recent consultation on the SLC’s report, the Scottish Government (2010a, para 4.19) noted that it had found “little if any support” for the proposed change during discussions with stakeholders. Subject to considerations of responses to its consultation exercise, the Scottish
Government is minded to reject the SLC recommendation underpinning the definition of ‘relative’ in section 14 of the Bill.

THE RELATIVES’ CLAIM: CALCULATION OF THE LOSS OF FINANCIAL SUPPORT SUSTAINED

The current law

In calculating relatives’ loss of financial support, it is generally for the relative to prove the actual loss sustained. However, where the relative making the claim is the deceased’s spouse, civil partner, cohabitant or his or her dependent children, the loss is usually calculated according to a formula laid down in the case of Brown v Ferguson (1990 SLT 274). Under this formula, the net incomes of the deceased and the pursuer are added together and 25% is deducted as a figure representing the deceased’s living expenses. The pursuer’s net income is then subtracted from the total obtained after the aforementioned deduction, leaving a sum representing the loss of financial support for the purposes of the claim (Scottish Law Commission 2008, para 3.39).

It should be noted that the SLC refers in its report to the formula in Brown v Ferguson being treated as a rule of law by the Scottish courts (Scottish Law Commission 2008, para 3.39). However in the recent case of Guilbert v Allianz Insurance plc (2009 SLT 264; 2009 SCLR 725) the court stated that there is no rigid rule of law which determines the appropriate percentage that should be applied when calculating loss of financial support.

The change proposed

In accordance with recommendation 11 of the SLC report, section 7 of the Bill makes provision for use of a fixed proportion of the victim’s net income in order to simplify the calculation of damages payable to relatives for loss of financial support.

In particular, the Bill provides that in relation to the victim’s spouse, civil partner or cohabitant, or in relation to a dependent child (as the latter term defined in the Bill) the courts are required to assume that 75% of the victim’s income was used to support these relatives and in assessing loss of support the income of the person making the claim should be disregarded entirely (section 7(1)(a) and (b); SLC report, recommendation 11(a) and (b)).

With other relatives, the Bill provides that the courts should continue to have to quantify the value of the support provided, but subject to a rule that the maximum value would be the 75% quota (section 7(1)(c); SLC report, recommendation 11(c)).

The criticism of the formula in Brown v Ferguson (and the main motivation for section 7 of the Bill) is that application of the formula to a two-income family – particularly where the pursuer is the larger earner – produces a sum that arguably does not reflect the economic loss actually sustained. In particular, it results arguably in under-compensation of the relative concerned (Scottish Law Commission 2008, para 3.43). In its report, the SLC (2008, para 3.43) quotes with approval the views of Susan O’Brien QC on this point:

“Today’s reality is that most ‘families’...have the couple’s joint income assessed for the purpose of obtaining mortgages or loans. This is by reference to gross income, not net, and the very roof over their heads will usually depend on a joint income at a given level in order to pay that mortgage. The true loss in wrongful death cases is in practice the inability to meet these joint commitments” (quoted in Scottish Law Commission 2008 at para 3.43)
Example 1 below shows how the current formula works in relation to the ‘traditional family’ where the deceased was the main breadwinner and the surviving partner’s primary role is looking after the home and the children. Example 2 shows how the current formula works where both individuals in the household earned income (and the surviving partner earned more than the deceased):

**Example 1**

The deceased had a net annual income of £20,000. The survivor had no independent income at the date of the deceased’s death. Added together, the couple’s joint net annual income at the date of the deceased’s death was £20,000. 25%, i.e. £5,000 is deducted as representing the deceased’s personal living expenses, leaving £15,000. The survivor’s net annual income (nil) is then subtracted leaving a loss of support assessed at £15,000.

**Example 2**

The deceased had a net annual income of £20,000. The survivor had a net annual income of £40,000 at the date of the deceased’s death. Added together, the couple’s joint net annual income at the date of the deceased’s death was £60,000. 25%, i.e. £15,000 is deducted as representing the deceased’s personal living expenses leaving £45,000. The survivor’s net annual income (£40,000) is then subtracted leaving a loss of support assessed at £5,000.

The following two examples demonstrate how the proposed new approach would work in practice. Example 3 illustrates how it would work in relation to the ‘traditional family’ (as described above), Example 4 shows how it would work where both partners earned income (and in fact the surviving partner earned more at the date of the deceased’s death than the deceased did):

**Example 3**

The deceased had a net annual income of £20,000. The survivor had no independent income at the date of the deceased’s death. 75% of the deceased’s net annual income of £20,000, i.e. £15,000 is taken as representing the loss of support.

**Example 4**

The deceased had a net annual income of £20,000. The survivor had a net annual income at the date of the deceased’s death of £40,000. 75% of the deceased’s net annual income of £20,000, i.e. £15,000 is taken as representing the loss of support. The survivor’s net income plays no part in the calculation.

**Views expressed on this issue**

Thirteen out of the 14 of those responding to Mr Butler’s consultation paper expressed a view on this particular issue. Seven of those respondents (including the STUC, the Faculty of Advocates, Thompsons Solicitors, UNITE and APIL) were supportive of the change proposed and 4 were against the proposal in its current form (FOIL, ABI, the Forum of Scottish Claims Managers and Peter McCormack, an advocate) (Butler 2010b).

Several of those respondents supporting the proposed change (including Thompsons Solicitors, UNITE and UCATT) mirrored the SLC in citing the fact that family structures have changed.

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7 The Law Society of Scotland expressed a view on the related issue of calculating the victim’s living expenses for the purposes of the victim’s claim but did not refer to the relatives’ claim specifically.
since the 1970s with many families now having two incomes and relying on those two incomes to meet their joint financial commitments (Butler 2010b).

Some supporters of the proposed change (including APIL, Thompsons Solicitors and the STUC) were attracted by the simplicity of the proposed rule (with the likely associated savings in time and legal costs) (Butler 2010b). UNITE (Butler 2010b) liked the transparency of the proposed rule and the anticipated consistency of treatment between relatives’ claims in different instances. In a similar vein the STUC (Butler 2010b) liked the anticipated consistency of treatment the victim’s and relatives’ claims in a given instance. Many respondents (including the STUC, ASLEF, Thompsons Solicitors and APIL) also referred to the benefit of avoiding an in-depth examination of a family’s personal finances at a time of great distress for that family (Butler 2010b). ASLEF (Butler 2010b) suggested change was desirable because the existing formula did not take account of the fact that the earnings of a high earning survivor may go down after death, for example, because he or she had to assume more childcare responsibilities.

The respondents opposing the proposed change did so on the grounds that a fixed rule violated the fundamental principle of the law of damages that compensation should only be for the actual loss suffered (Butler 2010b). In this regard, two respondents (FOIL and Peter McCormack) took issue with the SLC’s assertion that the current formula was fixed in law and stated that it was instead treated as a guide only (Butler 2010b). (Presumably the implication was that it was not correct of the SLC to say that what was proposed was that one fixed rule was to be replaced with another fixed rule).

The aspect of the proposed new rule which involved disregarding the surviving partner’s income entirely received particular criticism with the Forum of Scottish Claim Managers (Butler 2010b) arguing that it would lead to “gross overcompensation” in some instances. ABI (Butler 2010b) suggested that there was a clear link between the individual’s living costs and the joint income of the household. It argued that it would be more realistic to say that an individual’s living costs represented 25% of the joint annual income, not the deceased’s annual income, hence the surviving partner’s income should not be disregarded entirely. ABI recommended further financial assessment of the impact of the proposed rule in a range of situations.

In their recent consultation on the SLC report the Scottish Government (2010a, paras 4.04–4.11) acknowledged the divergent views on this issue and invited further discussion of various aspects of the proposed change, including whether it should take the form of a presumption rather than a fixed rule and whether the surviving partner’s income should be disregarded entirely.
THE RELATIVES’ CLAIM: USE OF A ‘MULTIPLIER’ IN CALCULATING DAMAGES FOR LOSS OF FINANCIAL SUPPORT

The current law

Compensation for future loss of earnings is currently based on the product of 1) the victim’s net earnings at the time of the injury and 2) a ‘multiplier’, ie a figure taken from tables of actuarial data known as Ogden Tables. A multiplier represents the number of years it is expected that the victim would have continued to earn income but for his or her injuries.

At present the multiplier runs from the date of death, not from the date of the proof (ie the date of the main court hearing).

The change proposed

In accordance with recommendation 12 of the SLC Report, section 7 of the Bill creates a distinction between past loss and future loss. It further provides that a single multiplier should be applied from the date of the court order awarding damages in respect of future loss only.

The policy rationale for the change is that a multiplier includes a discount for events that may or may not happen in the future (such as the deceased suffering ill health or being in an accident or experiencing a period of unemployment). Consequently, to apply a multiplier from the date of death to the date of the proof results in under-compensation as the losses incurred up to the date of proof are already known so no discounting needs to be made (Scottish Law Commission 2008, paras 3.45–3.46).

Views expressed on this issue

Eight out of the 14 respondents to Mr Butler’s consultation paper expressed a view on this issue (although one of those respondents not commenting on the topic – Thomspons Solicitors – had in fact suggested the proposal to the SLC in response to its initial Discussion Paper (Scottish Law Commission 2008, para 3.45)). Three respondents (the STUC, the Faculty of Advocates, and the Fire Brigades Union) were supportive of the proposed change and a further 5 respondents (FOIL, ABI, Forum of Scottish Claims Managers, APIL and Peter McCormack) were critical of what was proposed (Butler 2010b).

Four of the 5 respondents opposing the change (FOIL, ABI, APIL and Peter McCormack) argued that it is still appropriate to use a multiplier containing a discount for possible future events from the date of death because one of the important things which is unknown is the period that the deceased would have lived but for the accident and the uncertainty around this issue begins at the deceased’s death (Butler 2010b). Peter McCormack (Butler 2010b) commented that the current approach contained in the Ogden Tables is actually to use a multiplier from the date of death discounting for this particular uncertainty and a different multiplier in respect of losses arising after the court hearing which discounts for a wider range of possible future events. Thus, section 7 appears to prohibit more than was intended. Likewise whilst APIL (Butler 2010b) was critical of the current approach as leading to under-compensation, it preferred the approach in the Ogden Tables of using two different multipliers, as opposed to what is proposed in the Bill.

8 This figure is referred to in this context as the ‘multiplicand’. 
Peter McCormack (Butler 2010b) also questioned whether a multiplier for future loss should run from the date of the proof (i.e., the main court hearing) rather than from the date of the court order awarding damages as there could be a material time gap between the two dates.

The Forum of Scottish Claims Managers (Butler 2010b) opposed the change on the grounds that making the distinction between past and future losses introduced a new complexity which was at odds with the policy objective of other aspects of the Bill of simplifying and speeding up access to justice for the pursuer. Also, as the new approach assumes an actual court hearing and so it does not work so well for situations where damages settlements are negotiated out of court.

Two of the 3 respondents supporting the proposed change gave no detail of their reasoning (the STUC and the Faculty of Advocates) and the Fire Brigades Union agreed with the SLC that the current approach gave rise to under-compensation of pursuers (Butler 2010b).

The Scottish Government (2010a, para 4.14), in its recent consultation on the SLC report stated that it was “minded to accept” the proposed change but, in light of the concerns expressed by some stakeholders, thought that the opportunity to consider contrary views should be taken.

THE RELATIVES’ CLAIM: EXEMPTION OF MENTAL ILLNESS

The current law

As mentioned above, where a victim dies from his or her personal injuries, the victim’s relatives have a claim for damages not only for the loss of the victim’s financial support (a form of patrimonial loss) but also non-patrimonial loss sustained, such as grief and sorrow caused by the death (1976 Act, section 1(4)(b)).

The change proposed

Section 4 of the Bill, in accordance with recommendation 14 of the SLC report, provides that a relative’s claim for damages for non-patrimonial loss should be called a ‘grief and companionship award’ and that such an award should be in respect of emotions ordinarily experienced as a consequence of the death of a loved one. Consequently, section 14 removes any doubt existing in the current law as to whether damages in respect of mental illness suffered as a result of the death (as well as any associated economic loss) can be claimed in the context of damages for wrongful death. It clarifies that, instead, a separate claim would have to be made and assessment of this claim would be subject to the separate rules governing actions for damages for psychiatric injuries (Scottish Law Commission 2008, para 3.53).

Views expressed on the issue

Ten of the 14 responding to Mr Butler’s consultation expressed a view on this issue. Six respondents (including the Faculty of Advocates, the STUC and Thompsons Solicitors) were critical of this provision of the Bill, whilst 4 respondents (FOIL; ABI; APIL and the Forum of Scottish Claims Managers) were supportive of it (Butler 2010b).

A number of respondents who were critical of this aspect of the Bill (including Thompsons Solicitors, the Fire Brigades Union, the STUC and the Faculty of Advocates) pointed to the difficulties in practice of distinguishing severe grief reactions from mental illness (Butler 2010b). Several respondents (e.g., Thompsons Solicitors, UCATT and the Faculty of Advocates) thought
that it was appropriate to make an assessment of the loss based on the circumstances of the individual concerned and that what was proposed would unfairly penalise those who suffered from severe grief reactions (Butler 2010b). Several respondents (eg Fire Brigades Union, the Faculty of Advocates and Thompsons Solicitors) also suggested that a duplication of court actions should be avoided where possible, for various reasons (Butler 2010b). The Fire Brigades’ Union (Butler 2010b) suggested that it would extend the period of suffering for the families concerned and the Faculty of Advocates (Butler 2010b) cited the greater expense, inconvenience and use of judicial resources of two court actions. The Faculty of Advocates also noted that the proposed change may create problems in practice if the pursuer later discovers, as a result of the initial court action, that part of his or her loss is being treated as mental illness and so he or she will have to raise a second separate court action. For example, he or she might then fall foul of the rules on time bar which prevent court actions from proceeding after a certain period of time has elapsed since the act or omission causing the loss.

Two out of the 4 respondents (FOIL and ABI) supporting the proposed change did not give reasons for doing so (Butler 2010b). The Forum of Scottish Claims Managers (Butler 2010b) thought it was appropriate that damages for a mental illness should be claimed through a separate action because of the separate rules applicable to damages actions for psychiatric injury. (For more information on the current law relating to damages actions for psychiatric injury, as well as proposals for reform in this area, see the Scottish Law Commission’s report on the topic (Scottish Law Commission 2004)).

APIL (Butler 2010b) referred to the difficulty of distinguishing a mental illness from a grief action but, unlike the other respondents, suggested this was a reason to exclude consideration of mental illness from the arena of damages for wrongful death. In particular, APIL thought that to do otherwise could lead to the need for a psychiatric evaluation of the pursuer and this was likely to be found unpleasant by the pursuer.

The issue of exclusion of mental illness from the relatives’ claim for damages for wrongful death was not focused on in the Scottish Government’s (2010a) recent consultation paper on the SLC report.

FINANCIAL IMPLICATIONS OF THE BILL

The approach of the Financial Memorandum to the Bill

The Financial Memorandum (para 82) to the Bill states that the Bill will not cause an increase in the number of cases brought in Scotland for damages for wrongful death because it does not create any new category of wrongful death case.

The Financial Memorandum (paras 81 and 86) notes that whilst some parts of the Bill re-state the present law, and therefore have no cost implications, some parts of the Bill will have the effect of increasing awards of damages, and therefore have potential cost implications. In particular, damages for loss of financial support awarded will increase in cases in which the surviving spouse, civil partner or cohabitant has his or her own income.

Using data obtained from Thompsons Solicitors, a firm who deal with a significant proportion of the wrongful death cases in Scotland, the Financial Memorandum attempts to quantify the likely effect of the Bill on the level of damages awarded in wrongful death cases. Thompsons estimate from its own caseload that the average level of damages awarded for loss of the deceased’s financial support in a ‘fatal case’ (ie when the individual in question died in a fatal accident) would increase from £63,930 to £97,683 (Financial Memorandum, paras 87 and 88). This is an
average rise of around 53% (or £33,753).\(^9\) For ‘lost years cases’ (ie where the individual in question was suffering from a terminal illness) Thompsons estimate that the average level of damages awarded for loss of the deceased’s financial support would increase from £139,528 to £181,762 (Financial Memorandum, paras 87 and 89). This is an average rise of around 30% (or £42,234).\(^10\)

Using information obtained from Thompsons’ caseload, the Financial Memorandum (para 111) estimates that the aggregate costs of implementation of the Bill on defenders through increases in the level of damages awarded would be around £3.9 million per annum. Furthermore, it states that, in practice, these costs would be borne primarily by insurers, British Shipbuilders (indemnified by the UK Government’s Department for Business Innovation and Skills),\(^11\) the Ministry of Defence and local authorities (with the latter cost often also borne in practice by local authorities’ insurers) (Financial Memorandum, paras 98–100 and 111).

The Financial Memorandum (para 93) suggests that the simplification of the law proposed in the Bill will have the beneficial effect of earlier settlement of cases and a reduction in the numbers of cases which become formal court actions. Consequently, the Financial Memorandum (pars 94 and 95) suggests that “if insurers embrace the spirit of this legislation” they stand to make associated financial savings in terms of reduced legal costs and judicial expenses but this would depend on the insurers engaging with representatives of victims and their families at an earlier stage than they do at present.

**The approach of the Scottish Government**

The Scottish Government considered the financial implications of the recommendations contained in the SLC report in its recent consultation paper (Scottish Government 2010a, paras 5.06–5.12). In particular, the Government considered a range of possible costs and benefits associated with the recommendations in a **Partial Business and Regulatory Impact Assessment** (Scottish Government 2010b, forming part of Scottish Government 2010a).

The Government (2010a, para 5.09) commented in its consultation paper on the lack of official data associated with the financial implications of the SLC’s recommendations which it attributed to the fact that private civil law actions typically do not involve the State.

The Scottish Government (2010b, para 35; and 2010a, para 5.12) broadly accepted the conclusion reached in the Financial Memorandum that the Bill will not result in an increase in the number of cases brought in Scotland for damages for wrongful death.

The Scottish Government suggested that the increase in damages awarded for loss of the deceased’s financial support as a result of the Bill are likely to be “significant” (Scottish Government 2010b, para 35). In relation to who will bear these costs the Scottish Government commented as follows:

> “In most cases, the additional financial loss would not be wholly, or even mainly, incurred by the wrongdoer per se. Where the fault arises in the public sector, for example, an NHS organisation, a local authority, or a nationalised industry, the cost could often ultimately

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\(^9\) It should be noted that the Financial Memorandum suggests the average rise is 35%. This figure appears to have been obtained by dividing 33,753 by 97,683, not by 63,930 (prior to multiplying by 100 to obtain the relevant percentage). See also Scottish Government 2010b, para 35, footnote 13 on this point.

\(^10\) It should be noted that the Financial Memorandum suggests the average rise is just over 23%. This figure appears to have been obtained by dividing 42,234 by 181,762, not by 139,528 (prior to multiplying by 100 to obtain the relevant percentage). See also Scottish Government 2010b, para 35, footnote 13 on this point.

\(^11\) This is the successor department to the Department for Business, Enterprise and Regulatory Reform (referred to in the Financial Memorandum to the Bill at para 99).
fall to the taxpayer. In other circumstances, if the fault was the responsibility of the private citizen or a private sector business, the cost could often fall on insurance companies and, ultimately, on their policyholders, whether that be home insurance, car insurance, employers’ liability insurance or public liability insurance” (Scottish Government 2010a, para 5.07)

As mentioned above, the Bill proposes a new approach to calculating the claim for loss of financial support where the pursuer was the victim’s spouse, civil partner or cohabitant (section 7(1)(a) and (b)). The Scottish Government (2010a, para 5.10–5.11) suggested that because of the exclusion of consideration of the pursuer’s income under this approach, pursuers who are comparatively high earners would be the main beneficiaries under the new approach (although other pursuers would also benefit financially to a lesser extent).

The Scottish Government (2010b, para 35) suggested that financial savings associated with the enhanced legal clarity anticipated as a result of the Bill will be “ongoing but limited.”

**Views expressed in response to Mr Butler’s consultation**

Eight out of 14 respondents to Mr Butler’s consultation commented specifically on the financial implications of the Bill. None of the respondents were able to supply any detailed costings in relation to their comments (Butler 2010b).

FOIL (Butler 2010b) and ABI (Butler 2010b) suggested that there needed to be a further assessment of its financial impact. ABI (Butler 2010b) also identified possible costs resulting from the Bill, namely increased awards of damages in some instances, as well as potential savings associated with the Bill’s proposed simplification of the law and the compensation process.

The Forum of Scottish Claims Managers (Butler 2010b) suggested that there would be increased costs associated with the Bill which would be passed on to consumers in a variety of ways.

APIL (Butler 2010b) said they were not aware of any increased costs associated with the Bill. The remainder of the respondents who commented on the financial implications of the Bill (including the STUC, Thompsons Solicitors and the Fire Brigades Union) suggested that the Bill would be cost neutral or lead to savings associated with the simplification of the law and the compensation process (Butler 2010b).
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