Damages (Scotland) Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Damages (Scotland) Bill, introduced in the Scottish Parliament on 26 November 2026.

2. The following other accompanying documents are published separately:

- Explanatory Notes (SP Bill 3–EN);
- a Policy Memorandum (SP Bill 3–PM);
- a Delegated Powers Memorandum (SP Bill 3–DPM);
- statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 3–LC).

3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Summary of assumed increase in costs

4. The following represents a summary of the assumed increase of costs as a result of the Bill, which might be expected to occur after commencement and over the course of this parliamentary session.[1]

[1] A GDP deflator has been used to adjust the values in year 2 and onwards. Costs have been rounded to the nearest figure so separate costs may not add to the exact figure displayed under total costs.

	Year 1 2027/28 (£k)	Year 2 2028/29 (£k)	Year 3 2029/30 (£k)	Year 4 2030/31 (£k)	Total over 5 years (£k)
Scottish Administration	**£8.3 - £499.3**	**£52.3 - £908.3**	**£70.5 - £1,077.7**	**£72 - £1,090.7**	**£203.1 - £3,576**
NHS	£6.6 - £61.9	£50.6 - £472.6	£68.7 - £641.9	£70.2 - £654.9	£196.1 - £1,831.3
SCTS	£435.7	£435.7	£435.8	£435.8	£1,743
Other Bodies					
SLAB	No change	No change	No change	No change	-
Local Authorities	Potential increase in insurance premiums and excess but unquantifiable.				-
Individuals and Businesses	Potential increase in insurance premiums and excess but unquantifiable.				-

5. The Scottish Government expects that the costs of increased damages awards to the NHS will increase over the first three years after commencement. This is because it will take time for any increased costs to filter through the claims management system given the time taken between an injury and a final claim being resolved, with a small number of affected claims in the first year and the full impact on all claims by the third year. Insofar as costs to the SCTS are concerned, for any potential increase in the number of actions raised, the Scottish Government expects these will be immediate given that the proposed reforms in section 1 of the Bill regarding limitation of asbestos-related injuries remove a procedural barrier to the further progression of certain legal proceedings.

Costs on the Scottish Administration

National Health Service (NHS) Scotland

6. NHS bodies are liable in law for the negligent acts and omissions of their staff in the course of their NHS employment. Under NHS indemnity schemes, these bodies take direct responsibility for costs and damages arising from clinical and other negligence. This only applies where the NHS body – as employers – are vicariously liable for the acts and omissions of staff who are performing NHS functions.

7. NHS Scotland covers liability for personal injury and clinical negligence through the Clinical Negligence and Other Risks Indemnity Scheme (CNORIS). CNORIS is a national risk-sharing indemnity scheme that provides financial protection to eligible NHS bodies in Scotland against the costs of clinical negligence and other

specified liabilities. It achieves this by pooling the risk across participating organisations, ensuring that high-value and unpredictable claims are managed collectively rather than creating disproportionate financial pressure on individual bodies. Over the past ten financial years the value of claims made against the CNORIS scheme has ranged from £33.7 million to £109.2 million with the average cost being £54.1 million.

8. The Scottish Government does not expect the overall number of claims against the NHS to increase as a result of the Bill's provisions. The widening of the category of those who can claim for services rendered to the injured person beyond relatives (effected by section 2) will create additional financial costs attributable to the NHS. There will be a similar type of impact in respect of the provision in the Bill which widens the category of relatives which can claim for services provided by the injured person (section 5).

9. The specific nature of the claims in question relate to services rendered by those currently not classified as 'relatives' in legislation and cover activities such as assisting with household work, gardening and activities of a non-essential nature. As highlighted there is no way to determine the extent of involvement as some claimants may have no additional help and some may have a large degree of help.

10. It is difficult to say with any certainty as to the scale of the increase because there are no definitive statistics available that would provide context as to the likely uplift in damages awards therefore a broad estimation utilising advice from the NHS and legal professionals has been adopted.

11. In order to calculate a potential cost range associated with these activities the total number of claims against the NHS over the past 5 years has been averaged (790 cases) to act as the upper limit for annual claims. An upper and lower estimation as to the extended list of persons entitled to recover damages and the associated weekly time invested in providing care and assistance (3.5 hours to 14 hours per week) has been assumed. These are then attributed an hourly cost (£4 per hour) so that an upper and lower estimate can be provided. The cost per hour in these cases is not comparable to, for instance, the national minimum wage. The Scottish Government has heard from NHS' legal representatives that the actual hourly costs paid out in damages awards to persons providing these services to an injured person currently sit at lower levels, *circa* £4 per hour. Accordingly, a range of £3 to £7 per hour has been used to estimate costs.

12. There is no fixed length of time for how long an injured person may require care as a result of their injury, which will instead vary depending on the individual circumstances of each case, including factors such as the specific type and severity of the injury. Relatively moderate injuries such as severe sprains and simple fractures can take three to twelve months to heal. The Scottish Government does not have any evidence about the average length of time services are provided to an injured person in a claim against the NHS. For the purposes of estimating potential costs to the NHS, it has been assumed that six

months (or 24 weeks) of care and assistance will be provided to the injured person but this assumption is sensitive to the circumstances of each individual case. If the average length of time that services are provided to an injured person in annualised claims is greater than six months then the costs to the NHS would be greater than the estimate provided here. Likewise, if the average length of time is less than six months then the costs will be less than the estimate provided.

13. Finally, the category of persons who can claim services will not apply in all cases. For instance, the Bill provides that costs of services provided by ex-cohabitants can be recovered through damages but not all injured persons will have an ex-cohabitant providing such services (for example, under 20% of relationships in the UK are defined as cohabiting). Equally, most injured persons are likely to rely on services provided by family members rather than neighbours and friends. Estimates based on data from the Scottish Household Survey show that in 2024 just over a third (37%) of households consisted of a single person.[2] Not all of these people will have been injured as a result of an accident nor will they all rely on neighbours, friends or ex-cohabitants to provide services if they were injured.

14. In order to provide a high-level estimate of the impact of the Bill's provisions, it has been assumed that the number of claims in which increased damages might be sought will be one third of the annual average (263 cases), which is broadly in line with the estimated number of single-person households in Scotland.

15. Using these assumptions, the figures below provide a range of potential increased costs as a result of the Bill's provisions:

- Number of cases – 263
- Range of care and assistance hours provided – 84 hours to 336 hours2F[3]
- Range of hourly rate for care and assistance – £3 to £7 per hour
- Estimated minimum and maximum increased costs – £66,2763F[4] to £618,5764F[5]

16. This range represents 0.12% to 1.1% of the average value of claims paid out of the CNORIS scheme over the last 10 years (the average cost being £54.1 million).

17. As these costs estimates rely on a number of assumptions, the sensitivity table below demonstrates how estimated costs might vary under different assumptions of each variable together with confidence levels associated with these estimates.

[2] The data is available at Households and Dwellings in Scotland, 2025 | National Records of Scotland.
[3] This is based on a range of 3.5 hours to 14 hours of care and assistance provided per week.
[4] That is, 84 hours of care and assistance at £3 per hour, multiplied by 263 cases.
[5] That is, 336 hours of care and assistance at £7 per hour, multiplied by 263 cases.

Number of cases	Range of hours of care and assistance provided	Range of hourly rate for care and assistance	Estimated minimum and maximum increased costs	Confidence level
79	84 hours - 336 hours	£3 - £7 per hour	£19,908 - £185,808	Low
263	182 hours - 728 hours	£3 - £7 per hour	£143,598 - £1,340,248	Low
263	84 hours - 336 hours	£9 - £12 per hour	£198,828 - £1,060,416	Low
263	84 hours - 336 hours	£3 - £7 per hour	£66,276 - £618,576	Medium

18. The Bill also seeks to amend how inflation can be taken into account when calculating the personal injury discount rate (PIDR). The PIDR is an adjustment of an award of damages to reflect the fact that the injured person is able to invest the money before the loss or expense for which it is awarded has actually occurred. That investment will generate a return and the PIDR aims to take that into account so as to avoid over- or under-compensation. The proposed change brought about by the Bill will not, of itself, have a financial impact but, should the index be modified in the future, there may be financial consequences for defenders like the NHS. Any such consequences may be mitigated by the use of a periodical payment order (PPO). Through a PPO, parties agree to make regular payments rather than pay a single lump-sum figure which has to be adjusted by the PIDR.

19. There is no single total number of damages claims against NHS Scotland because figures depend on the time period, claim type and other factors. NHS National Services Scotland's Central Legal Office received 945 claims for compensation in 2024–2025[6], made up of clinical negligence claims, employee claims, and other claim types[7]. Not all these claims will be affected by the PIDR, only those involving future pecuniary loss. Given the unknown information about whether the power would be exercised to adjust an inflation upward or downward, the number of claims to which the PIDR would apply, and whether there will be a positive or negative financial effect, the indictive table below demonstrates how such changes could impact costs.[8]

PIDR	100 claims impacted	300 claims impacted	600 claims impacted
-0.5%	+£10.1m	+£30.6m	+£61.2m
+0.5%	-£8.8m	-£26.5m	-£52.9m

[6] The figures can be found in the CNORIS Annual Report 2024-2025.
[7] The number of claims made each year will not usually correlate with the number of claims paid given the time taken to work through a claim and not all claims will be settled in favour of the injured person.
[8] The table uses the assumptions in the example set out below in the section on ‘Costs to Individuals and Businesses’ and assumes that all damages claims will involve an adult of the same age, educational background, etc., which would not be the case in reality.

Costs on Scottish Courts and Tribunals Service (SCTS)

Injuries attributable to asbestos exposure and limitation

20. The Bill includes legislative provision that will reform the law of limitation in Scotland such that a failure to raise an action within the limitation period for an asymptomatic condition (such as pleural plaques) would not preclude an injured person from subsequently raising an action for a symptomatic asbestos-related condition (such as mesothelioma).

21. The Scottish Government has consulted with representative bodies for solicitors acting for pursuers and defenders and has concluded that there may be an increase in the number of proceedings raised in court. This is because, inevitably, the effect of the reform will be that some cases which would be time-barred under the current law will not be so if the proposed reform is agreed, and some of these claims may reach court. The Scottish Government also understands, on the other hand, that the number of mesothelioma cases is likely to decrease over time as the number of people exposed to asbestos decreases.

22. While the provision may increase the number of claims reaching court in the short term, the Scottish Government considers that any such increase will be small. Firstly, this is because the overwhelming majority of personal injury claims settle before reaching court (around 80% based on an estimate provided to the Scottish Government by the Association of Personal Injury Lawyers). Secondly, the Scottish Government understands that some injuries attributable to asbestos do currently proceed to court even though they are out of time. The court has an equitable discretion to allow a claim to proceed even though it may be outwith the three-year limitation period. This type of claim may, in the future, settle before reaching court.

23. According to the SCTS' civil statistics, over the last six years (from 2019/20 to 2024/25) there has been an annual average of 487 personal injury cases involving asbestos.[9] This comprises about 6% of the annual average of all personal injury cases. In the Court of Session there was an annual average of 93 cases (19% of the annual average of all personal injury cases raised in that court); in the Sheriff Court there were 8 cases (0.2% of the annual average of all personal injury cases raised in that court); and in the National Personal Injury Court (NPIC) there were 386 cases (9% of the annual average of all personal injury cases raised in that court).

Sheriff Court and NPIC

24. Costs to the SCTS will vary depending on the stage at which a case is settled/decided. It is recognised there may be an element of cost recovery from court fees, which are payable by parties at different stages in the proceedings. In 2024/25, cost recovery in the sheriff courts was 71% meaning that on average

[9] The SCTS' statistics are available at SCTS Statistics | Scottish Courts and Tribunals Service.

71% of the costs of administration were recovered through court fees.[10] The figure for the Court of Session was 59%.[11] There will also be separate costs to the parties, where they appoint legal representation. Any level of cost recovery to the SCTS, however, is difficult to estimate and will be dependent on:

- the type of civil action;
- the length and complexity of the case; and,
- whether parties qualify for fee exemption.

25. Costs will be highly variable depending on the type of proceedings and because some claims conclude very early on in proceedings whilst others will only conclude very close to a proof (that is, an evidential hearing). Costs will also be dependent on pre-proof activity, including:

- the lodging and processing of unopposed motions;
- opposed motion hearings;
- hearing debates;
- sisting/review of sist; and,
- variation of the case timetable.

26. It is not possible to provide an estimate of this kind of cost to the SCTS, where a case concludes before proof. As mentioned above, though, cost recovery figures mean that a significant percentage of the administrative costs to the SCTS involved in processing these types of legal proceedings will be recovered through court fees.

27. The Scottish Government understands from those representing injured persons and insurers that around 1% - 3% of cases raised in court proceed to proof. It is possible to provide an estimate of the potential increase in costs in these types of cases. The SCTS estimates that, if an action proceeds to proof in the sheriff court and the NPIC, the costs to the SCTS will be in the region of £1,685 (based on an optimal 5 hours daily sitting time in the sheriff court). These costs include staff and judicial time and are the gross cost to the SCTS, i.e. before court fees have been taken into account.

28. The Scottish Government has modelled the following costs estimate on a non-significant increase in the number of cases proceeding to proof and which are dealt with in a one-day sitting. The Scottish Government does not expect the provisions in the Bill to have any effect on the percentage of cases that actually proceed to proof versus those that settled before proof. A range of costs have been set out for the Sheriff Court and NPIC.

[10] Court recovery figures for the SCTS are contained in its Annual accounts, available at Annual Report and Accounts 2025-26 | Scottish Courts and Tribunals Service.
[11] Court recovery figures for the SCTS are contained in its Annual accounts, available at Annual Report and Accounts 2025-26 | Scottish Courts and Tribunals Service.

- No increase (12 (3% of 394[12]) cases): £20,220
- 5% increase (13 (3% of 414) cases): £21,905 (+ £1,685)

Court of Session

29. As mentioned above, the costs to the SCTS will vary depending on the stage at which a case is settled/decided. The SCTS estimates that, if an action was defended and reached proof in the Court of Session, the costs to the SCTS will be in the region of £2,391 (based on an optimal 5 hours of daily sitting time in the Outer House of the Court of Session). These costs include staff and judicial time and are the gross cost to the SCTS, i.e. before court fees have been taken into account.

30. Assuming a non-significant increase in the number of cases reaching court, the Scottish Government has set out a range of costs for the Court of Session.

- No increase (3 (3% of 93[13]) cases): £7,173
- 5% increase (3 (3% of 98) cases): No change.

Total

31. The total across the sheriff court, NPIC and Court of Session is:

- No increase (487 cases): £27,393
- 5% increase (512 cases): £29,078 (+ £1,685).

32. A proportion of these costs may be offset by court fees, which are payable by parties at different stages in the proceedings. Any level of cost recovery to the SCTS is, however, difficult to estimate and will be dependent on, amongst others, the type of personal injury action, the length and complexity of the case, and whether parties qualify for fee exemption.

Management of awards of damages to children

33. The Bill contains two further provisions that may increase the costs for the SCTS, both related to the management of damages awards for children.

34. First, the court, when applying section 13 of the Children (Scotland) Act 1995, must have regard to the same matters that it must consider under section 11 of that Act, namely (i) the welfare of the child, (ii) the “no order” principle and (iii) the views of the child.

[12] From figures provided by the Forum of Insurance Lawyers (FOIL) to the Scottish Government, the Scottish Government understands that around 1-3% of cases that reach court will go to proof so the upper figure of 3% is used to calculate the assumed increase in cases.
[13] From figures provided by the Forum of Insurance Lawyers (FOIL) to the Scottish Government, the Scottish Government understands that around 1-3% of cases that reach court will go to proof so the upper figure of 3% is the assumed increase in cases.

35. Second, the Bill imposes a duty on the court to inquire into the administration of an award of damages made to a child and to remit the matter to the Accountant of Court for consideration if it considers it appropriate to do so in the circumstances of the case. If the court does not remit the case to the Accountant of Court, then it must explain in a written report why this was not necessary.

36. The SCTS' civil case management system is designed for operational purposes rather than statistical collection and, in most cases, court proceedings will be raised in the name of a child's parent or guardian on their behalf, making the volume of cases involving a child difficult to identify.

Duty on court to consider and obtain the views of a child

37. The SCTS is of the view that there may be increased costs associated with the court having to consider and obtain the views of the child, together with the future administration of a damages award, this is, however, challenging to estimate because of the uncertainty around the possible volume of court proceedings involving a child. Given this uncertainty, it is not possible to provide a quantified assessment of any potential increase in costs associated with this provision.

38. When preparing the Financial Memorandum to the Children (Scotland) Bill, which imposed a duty on the courts to consider the best way of obtaining a child's views, the Scottish Government considered that the duty might cost around £100 per case. The effect of inflation since that Financial Memorandum was published in 2019 means that this figure would now be £134.35.

39. Different ways of communicating with children would cost different amounts. Currently, in other types of legal proceedings, the views of a child can be taken by way of a form, an independent solicitor, or directly by the sheriff involved in proceedings. This may lead to more judges and sheriffs speaking directly to children. Some judges and sheriffs already speak directly to children to establish their views on who they should live with or have contact with but the most common method, in family proceedings, is through completing a form (F9). Similar arrangements are likely to be replicated in cases where damages are awarded to children. Based on figures in the Financial Memorandum to the Children (Scotland) Bill, the average cost of a sheriff obtaining the views of the child could be £1,175.57 (which is £875 adjusted for inflation). This incorporates the sheriff's time and also the time of a clerk of the court and a court officer who would be required to be present whilst the child was talking to the sheriff.

40. The Scottish Government understands that children are involved in around 5-10% of personal injury claims, based on a subjective estimate made by pursuer solicitors.[14] Between 2019/20 and 2024/25 the average annual number of personal injury proceedings raised was 8,574, giving a range of 429 to 857 cases annually potentially involving children.

[14] The figures were given to the Scottish Government by the Association of Personal Injury Lawyers, based on its members' experience.

41. For considering the views of the child, the following provides a higher and lower estimate rounded to the nearest £k:

- Lower estimate - £58k (429 cases x £134.35)
- Higher estimate - £115k (857 cases x £134.35).[15]

42. For obtaining the views of the child, the Scottish Government has provided a table showing a range of estimated costs for this provision depending on the number of children whose views are being heard by a sheriff. As mentioned above, the views of a child can be obtained in a number of ways, including in writing, and not all children will be capable of giving a view.

	100 children's views	200 children's views
Cost	£118k	£235k

Duty on court to consider remitting the case to the Accountant of Court

43. There will also be associated costs for the Accountant of Court where a case is remitted for administration and oversight. Again, for similar reasons already stated, and that the level of oversight may vary from case to case, it is also difficult to predict any potential costs associated with the proposed measures and so it is not possible to provide a quantified assessment of any potential increase in costs associated with this provision.

44. On the basis of available records, the Accountant of Court confirmed to the Scottish Law Commission that, during the 14 years from 2009 to 2023, there appear to have been few remits of damages awards to her. In practice, it is understood that section 13 is used only where a case goes to proof, and as mentioned above, the vast majority of personal injury cases settle. Furthermore, if there has been no court involvement in the case, section 13 does not apply.

45. For the purposes of estimating costs though, an imperfect parallel could be drawn to fees charged by the Accountant of Court in work managing estates where a judicial factor has been appointed. The AoC is responsible for supervising judicial factors and work includes registering cases, examining estate and management plans, auditing accounts and reporting with regard to discharge. The AoC of court charges judicial factors a fee for each of these actions.[16] Although the work for each referral will vary in the circumstances of each case, the Scottish Government has assumed that each referral would involve a registration fee, an examining fee (which varies depending on the size of the estate), and a report fee. The cost to SCTS, where fees cover the work of SCTS staff involved, would be £842.[17]

[15] This estimates assumes that in every case the court would need to establish how a child wishes to give their views. This figure may be lower as some cases involve very young children who are incapable of forming their views.
[16] The current fees can be on the SCTS' website.
[17] This is based on the value of the estate/award being between £250k-£500k.

46. As mentioned already, the range of legal proceedings involving a child could be between 5-10%, or 429 to 857 cases annually. Not all of these cases will be referred to the Accountant of Court for a report as the Scottish Government expects the overwhelming majority of pursuers will have a sound management plan in place rather than incur the delay and expense of having their case referred to the Accountant of Court. The figures above indicate that there have been very few remits to the Accountant of Court over the last 15 years.

47. The Scottish Government has provided a table showing a range of estimated costs for this provision depending on the number of referrals, which has historically been very low.

	10 referrals	50 referrals	100 referrals
Cost	£8.5k	£42k	£84K

Costs on local authorities

48. The Scottish Government understands that all Scottish local authorities hold liability insurance to cover themselves against, amongst other things, personal injuries. These policies are largely underwritten by commercial providers and each local authority will have an excess to meet in respect of that policy. Any increase in costs to local authorities will depend on the extent to which any premiums or excesses increase. There are a range of factors associated with this, including individual local authorities' experience in other claim cases.

49. The Scottish Government has heard from insurers that any increase in relation to the number of personal injury claims or the amount of awards is likely to be reflected in the costs of insurance premiums. The Bill's provisions may increase the number of personal injury claims and/or the amount of awards, which is likely to be reflected in the costs of insurance premiums. Where damages are awarded for future pecuniary loss, the effect of the delegated powers to be conferred by sections 8 and 9, if utilised, may increase/decrease awards of damages depending on how the power conferred on Ministers is exercised. Therefore, the Bill may increase the costs paid by local authorities for insurance. CoSLA has been unable to quantify any potential increase in costs, although it expects costs to increase because of potential larger awards and the effect of the limitation provision on asbestos-related cases. It is not possible, therefore, for the Scottish Government to provide an estimate of any potential increase in costs.

50. Overall, the Scottish Government anticipates that any potential increase in costs to local authorities as a result of the Bill will not be significant. While the Bill's provisions are, in general, likely to have the effect of increasing damages awards, the Scottish Government anticipates any such increase to be small but still significant (see section on 'Costs to individuals and businesses' below).[18] In

[18] The Scottish Government understands from discussions with the Association of British Insurers that that 'services awards' are likely to comprise a small part of a damages award.

addition, any increase to insurance premiums and policy excess will be influenced by a range of factors including past claim history, not solely the potential value of damages awards in some circumstances.

Costs on other bodies, individuals and businesses

Costs on Scottish Legal Aid Board (SLAB)

51. While legal aid is available for personal injury cases, in practice, firms, particularly those that specialise in this area of work, often take on new cases under a "no win no fee" arrangement, backed up by a variety of legal expenses insurance and indemnification schemes.

52. SLAB's Annual Report includes sums spent on legal aid grants for 'reparation' cases. It does not subdivide these sums into personal injury and non-personal injury and these figures will also include sums for cases such as contractual disputes. On request, SLAB has further assessed the reparation category and provided to the Scottish Government a report on the number of cases and amounts spent on cases that appear to relate to personal injury.

53. The number of full legal aid grants has declined each year from 2021-22 (115 applications granted) to 2025/26 (52 applications granted). The total paid out has fallen by more than half, from £5,464,857 in 2021-22 to £2,473,995 in 2025/26, although the average cost of a case has remained fairly constant (£47,520 in 2021-22 and £47,577 in 2025/26).

Advice and Assistance

54. Advice and Assistance (A&A) is available for those seeking initial advice in relation to a matter of Scots law. The eligibility criteria for A&A are that an individual must have less than £1,716 in capital (which includes savings), and earn less than £245 per week.

55. Over the last five years (from 2021/22 to 2025/26) there has been an annual average of 262 cases in which A&A for personal injury has been claimed from SLAB. The average cost claimed in these cases was £2,383.[19]

56. As already mentioned, the Scottish Government does not expect the changes brought about by the Bill to lead to an increase in disputes.[20] Therefore, the Scottish Government expects the applications for A&A will remain unchanged.

[19] This information was provided by SLAB to the Scottish Government.
[20] While the number of asbestos-related personal injury cases that proceed to court may increase, the Scottish Government expects that the numbers of persons seeking Advice and Assistance will largely

Civil Legal Aid

57. An individual seeking advice or to raise civil proceedings would have to meet the eligibility criteria and find a legal aid solicitor willing to undertake the work. SLAB also must be satisfied that it is reasonable to pursue or defend the case, meaning it has a reasonable chance of success.

58. For full Civil Legal Aid, the eligibility criteria are that an individual must have annual disposable income below £3,521 and disposable capital less than £7,853. The number of applications and the total sum paid will vary from year to year. In addition, with full Civil Legal Aid, there may be a contribution to costs due from the assisted person depending on their financial situation. SLAB may also recover costs if money or property are awarded by the courts as part of its disposal.

59. Over the last five years (from 2021/22 to 2025/26) there has been an annual average of 81 applications granted in which Civil Legal Aid for personal injury has been claimed from SLAB..[21] The average cost claimed in these applications was £48,797. The changes brought about by the Bill are unlikely to affect the number of applications that are granted for full Civil Legal Aid or have any significant effect on the costs of pursuing a claim.

Conclusion

60. Overall, SLAB has told the Scottish Government that it does not consider that there will be any major impact on the legal aid fund for the following two reasons. First, the trend for the funding of personal injury actions is towards alternative arrangements. Second, successful personal injury cases are usually accompanied by an award of expenses against the opponent which, if recovered, covers the cost of the case.

Costs to individuals and businesses

61. The Scottish Government has heard from the Association of British Insurers that any increase in relation to the number of personal injury claims or the amount of awards is likely to be reflected in the costs of insurance premiums. Therefore if, as a result of the Bill's provisions, the costs of defenders/insurers of personal injury claims increase, then consumers and businesses may have to pay higher insurance premiums, covering motor insurance and employers' liability insurance in Scotland. Any general increase in insurance premiums is not inevitable as insurers can, and already do, tailor the cost of insurance to individual businesses based on a range of factors, including previous claims history.

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remain unchanged. This is because a new cause of action is not being created: individuals already affected by an asbestos-related case can currently seek legal advice and assistance, although the advice may currently be that a case is time-barred.

[21] This information was provided by SLAB to the Scottish Government.

62. The Association of British Insurers (ABI) collects a breakdown of quarterly motor claims data by type of claim from its member firms which, since 2021, has been disaggregated by the UK's legal jurisdictions.[22] The average cost of a motor claim in England and Wales in 2025 was £4,700 and it in Scotland it was £5,700. The annual average motor claims costs incurred by insurers in Scotland have tracked higher than in England and Wales since 2023.

63. The predominant reason suggested by the ABI for the average higher costs of motor claims is the consistently higher cost of compensation for bodily injury, which is on average 15% higher in Scotland than England and Wales.[23] Sections 2 and 5 of the Bill are focused on updating the categories of who may claim 'service' awards under sections 8 and 9 of the Administration of Justice Act 1982 which are the sections of the Bill that will have most impact on the amount of damages awarded, while other sections less so (although section 1 of the Bill may lead to a small increase in the number of overall cases).

64. In some circumstances the clarity brought about by the provision on Permanent Health Insurance (PHI) schemes (otherwise known as income protection schemes) could lead to a reduction in damages awards in relevant circumstances. A typical PHI policy provides income to employees who are unavoidably absent from work for prolonged periods. Usually the premiums are paid by the employer but the employee may contribute in some way. The Bill makes clear in which circumstances a person is said to have contributed to a PHI. Evidence suggests that there are approximately 20,000 policies in the UK, covering just under 10% of UK working population.[24] The majority of these types of scheme are tailored for small- to medium-sized enterprises. It is not possible, though, to determine the number of PHI schemes that meet the criteria set out in the Bill nor the value of non-deducted payments made out to such schemes currently. Nevertheless, the clarity brought about by the Bill should reduce damages awards in relevant circumstances.

65. The Scottish Government understands that the costs of pursuing and defending a personal injury claim will depend on a variety of factors, including private arrangements made, and the length and scope of work involved. For pre-litigation settlements, costs payable by a defender to a pursuer are calculated with reference to the pre-action protocol scale where that applies either by automatic operation of law or by agreement between the parties.[25] This provides for a £546 block fee in every case plus a first percentage fee of 3.5% of the damages up to £25,000 plus a second percentage fee on varying percentage terms with reference to the amount of damages, all plus VAT and reasonably incurred

[22] This information was provided by the ABI in correspondence to the Scottish Government. The ABI does not hold equivalent claims data for employers' liability insurance or public liability insurance.
[23] This information was provided by the ABI in correspondence to the Scottish Government.
[24] The data is accessible at https://www.wtwco.com/en-gb/insights/2025/08/group-income-protection-the-powerful-tool-most-uk-employers-are-missing-out-on.
[25] The protocol only applies automatically to single-post 28 November 2016-incident personal injury claims of up to £25,000, excluding disease and clinical negligence claims. Where the protocol does not apply, or is not agreed to apply, costs in a pre-litigation settlement are for negotiation between the parties.

outlays.[26] For settlements after litigation has been raised, costs payable on top of damages are determined by judicial expenses set by statute.[27]

Personal injury discount rate and periodical payment orders

66. The Bill seeks to amend how inflation can be taken into account when calculating the personal injury discount rate (PIDR). The PIDR is an adjustment of an award of damages to reflect the fact that the injured person is able to invest the money before the loss or expense for which it is awarded has actually occurred. That investment will generate a return and the PIDR aims to take that into account so as to avoid over- or under-compensation.

67. The current PIDR in Scotland is +0.5% and so the court will, in relevant cases, apply a discount factor to reduce the upfront lump sum awarded today because the investment yields on an invested award will make up the difference.

68. The Bill seeks to change the inflation measure referenced in legislation from the retail prices index to the consumer prices index (CPI); and confer on the Scottish Ministers the flexibility to modify a published inflation index so that the PIDR can better reflect damages inflation and thereby avoid a general under- or over-compensation of a damages award.

69. The proposed change brought about by the Bill will not, of itself, have a financial impact but, should the index be modified in the future, there will be financial consequences for defenders/insurers. The Scottish Government anticipates that the power will be exercised given that it can be used to more accurately reflect damages inflation, although the Scottish Government does not know how it will be exercised and so cannot assess the change in damages awards. The Scottish Ministers, if they exercise their power to vary the default rate of inflation, will be in a position to assess the financial impact at the time of exercising the power.

70. Nevertheless, to give a sense of the impact the PIDR, and inflation, can have on an award of damages, the following example may be of assistance. A 42 year old man, who was previously employed and has Higher grades, has an accident that leaves him severely injured and able only to do sedentary work. He would have earned a net figure of £27,500 per year until retirement at age 68, but can now expect to earn £7,500. The cost of care is expected to be £13,500 per year. The court awards a sum of £1,011,063 as damages. This is adjusted to take into account the PIDR as the below:

[26] Applying this by way of an example, protocol scale costs on a £25,000 damages settlement would be £4,255.20, plus VAT and reasonably incurred outlays.
[27] See principally Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 (S.S.I. 2019/75) in relation to sheriff court actions, and Chapter 42 of the Rules of the Court of Session and S.S.I. 2019/75 in relation to Court of Session actions.

PIDR	Lump sum
-1%	£1,231,263 (£220,200 more than sum at 0% PIDR)
-0.5%	£1,113,021 (£101,958 more than sum at 0% PIDR)
0%	£1,011,063
+0.5%	£922,881 (£88,182 less than sum at 0% PIDR)
+1%	£846,315 (£164,748 less than sum at 0% PIDR)

71. Insofar as periodical payment orders are concerned, Part 2 of the Damages (Investment Returns and Periodical Payments) (Scotland) Act 2019 has not yet been brought into force. When it is, though, the Scottish Government anticipates that most pursuers and defenders will agree between themselves the appropriate rate, or rates, of inflation to alter periodical payments and so the default situation will seldom, if ever, apply. This is because a damages award is often a mix of heads of loss that will increase according to prices inflation or wages inflation. Pursuers and defenders will rarely rely on the default index as this will often over or under-compensate the pursuer. The Scottish Ministers, if they exercise their power to vary the default rate of inflation, will be in a position to assess the financial impact at the time of exercising the power.

Legal profession

72. The Bill would give rise to a period of adaptation for training costs for legal practitioners who advise either pursuers, defenders or both. Legal professionals are most likely to be impacted directly by the reform of the law given their need to be up-to-date with changes in legislation and practice. Anticipated costs are likely to be borne by firms and the Faculty of Advocates in making their staff aware of the changes to the law effected by the Bill. An initial training and familiarisation cost, principally for solicitors and counsel but perhaps also for other professionals in relevant fields, would be likely. Generally, familiarisation costs of any change in the law will be incurred by those providing training within legal firms. However, the provision of such training is typically already provided for within a firm's budget, with the cost of maintaining solicitors' and other professionals' legal knowledge being covered by the firm's fee earning income.

73. Scottish solicitors are required to undertake 20 hours of Continuing Professional Development (CPD) each year and familiarisation training on changes to the law would typically count towards this figure. Those solicitors affected could choose to spend some of their time on training in this area in the relevant year and therefore there might be no overall increased cost in doing so if they undertake training on this topic rather than on another topic. If there is a need for additional training on the law in this area, some firms will be able to do the training in-house (larger firms often provide some in-house training for staff) and/or solicitors could access training and CPD via other providers. The Law Society of Scotland has told the Scottish Government that its CPD costs for members (i.e. solicitors) is:[28] 3 hours training = £130 + VAT; 6 hours training = £260 + VAT. There are a number of other providers of CPD and legal training in Scotland. It is difficult to

[28] Non-members (i.e. non-solicitors) can attend these sessions too but at a higher rate.

estimate how many practitioners will seek CPD sessions, as individual practitioners are responsible for evaluating their own needs for further training or education. However, based on the options available to undertake CPD, it is likely that initial training in relation to this Bill would not represent a significant additional cost to law firms.

74. With regards to individual and businesses who are not legal professionals, the overall policy aim is to produce rules that are as clear, certain and accessible as possible. As mentioned above, a number of anticipated specific economic impacts caused by some provisions of the Bill which, the Scottish Government understands, could lead to an increase in relation to the extent of recoverable claims, leading to an increase in insurance premiums.

Damages (Scotland) Bill

Financial Memorandum

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