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Lady Paton
Chair,
Scottish Law Commission

By email to: Ann.Paton@scotlawcom.gov.uk

15 May 2025

Dear Lady Paton,

REPORT ON DAMAGES FOR PERSONAL INJURY

I am grateful for receipt of the Scottish Law Commission's (SLC) Report on Damages for Personal Injury (Scot Law Com No. 266) which was published in December 2024 and welcome the engagement and scrutiny that the SLC has undertaken in reaching its final recommendations. This letter sets out the Scottish Government's response to the SLC's recommendations as set out in that Report.

Overall, I am supportive of the general approach set out in the Report, including the recommendations regarding the Prescription and Limitation (Scotland) Act 1973 and asymptomatic asbestos-related conditions.

Some points regarding specific recommendations are outlined below.

Recommendation 5: New rule of court to the effect that a pursuer bringing a claim under section 8 of the Administration of Justice Act 1982 is required to produce an affidavit

Paragraph 2.57 sets out your view on the need for a Practice Note or Rule of Court for proceedings raised under section 8 of the Administration of Justice Act 1982. The Scottish Government will write to the Scottish Civil Justice Council to ask it to consider this recommendation.

Recommendation 6: CRU universal credit certificates

The Scottish Government notes what is said at paragraph 3.13 about the difficulties caused by the introduction of Universal Credit certificates and will bring this issue to the attention of the UK Government.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Recommendation 9: Amending the definition of “injury” in section 150 of the Health and Social Care (Community Standards) Act 2003

The Scottish Government notes from paragraph 3.84 the substantial opposition from consultees to any reform of the existing regime in relation to the costs of an injured person’s medical treatment, and recognises that the definition of “injury” in section 150 of the Health and Social Care (Community Standards) Act 2003 was raised by a small number of consultees. As recognised, any reform to the definition would have significant implications for the NHS and for the insurance industry. The Scottish Government does not intend to take any action at this time in respect of this recommendation. We may be able to give full consideration of the issues involved in the future should Scottish Government resources permit.

Recommendation 11: Recovery of an injured person’s care and accommodation costs as provided by local authorities

The Scottish Government notes what is said at paragraph 3.152 which records that there was no majority in favour of any of the options for reform put forward by the SLC and that a considerable number were not in favour of any of the options posed. The Scottish Government does not intend to take any action at this time in respect of this recommendation. We may be able to give full consideration of the issues involved in the future should Scottish Government resources permit.

Recommendation 13: Applying key principles in relation to children from section 11 of the Children (Scotland) Act 1995

The Scottish Government broadly accepts recommendation 13. The Scottish Government agrees that the court when applying section 13 should have regard to i) the welfare of the child; ii) the “no order” principle; and (iii) the views of the child.

However, section 11 of the Children (Scotland) Act 1995 is due to be amended by section 1 of the [Children \(Scotland\) Act 2020](#). In particular, these amendments will remove the current presumption that a child aged twelve years of age or more is of sufficient age and maturity to form a view and replace it with a presumption that the child is capable of forming a view unless the contrary is shown. The Scottish Government plans to commence relevant subsections of section 1 of the 2020 Act later this year – please see [Letter from the Minister for Victims and Community Safety](#).

Therefore, the Scottish Government considers that provisions on the views of the child should reflect this new approach rather than the existing one in the 1995 Act. This will require an amendment to section 7 of the draft Bill.

Recommendation 14 (impose a duty on the court, prior to granting decree for damages for a child, to inquire into the future administration of the award)

On recommendation 14, the Scottish Government notes that paragraph 5.33 records mixed views and paragraph 5.35 the views of those against. Before taking this recommendation forward, the Scottish Government would intend to ask for more comments from the courts, the Accountant of Court, practitioners, and bodies representing children.

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Recommendation 16: Scottish Ministers should consider exercising their power under section 9(8) of the Children (Scotland) Act 1995 to modify the monetary limits in section 9(2) of that Act, by secondary legislation

This is not a priority area but, consulting the Accountant of Court and others, the Scottish Government will, in due course, consider if the powers at section 9(8) of the Children (Scotland) Act 1995 should be used to amend by Scottish Statutory Instrument the sums contained in section 9(2).

Yours sincerely,



Siobhian Brown

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