This document relates to the Limitation (Childhood Abuse) (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 November 2016

Limitation (Childhood Abuse) (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 Limitation (Childhood Abuse) (Scotland) Bill, introduced in the Scottish Parliament on 16 November 2016.

2. The following other accompanying documents are published separately:

- statements on legislative competence by the Presiding Officer and the Cabinet Secretary for Justice (Michael Matheson MSP) (SP Bill 1–LC);
- Explanatory Notes (SP Bill 1–EN);
- a Policy Memorandum (SP Bill 1–PM).

3. The Policy Memorandum, which is published separately, explains in detail the background to the Bill and the policy intention behind the Bill. The purpose of this Financial Memorandum is to set out the costs associated with the measures introduced by the Bill, and as such it should be read in conjunction with the Bill and the other accompanying documents.

The Bill

4. The Limitation (Childhood Abuse) (Scotland) Bill ("the Bill") removes the three year limitation period for actions of damages where:

- the damages claimed consist of damages in respect of personal injuries,
- the person raising the action was a child (under the age of 18) at the time the act or omission that caused the injury occurred,
- the act or omission to which the injuries were attributable constituted abuse, and
- the action is brought by the person who sustained the injuries.

5. In the Bill, “abuse” is defined to include sexual abuse, physical abuse, and emotional abuse.

6. The removal of the limitation period will apply whether the abuse occurred before or after commencement of the new provisions.

7. The Bill allows a previously raised case to be re-raised if the reason for its disposal was the limitation period.

8. The Bill also includes a provision which enables the court to consider whether the action should proceed if the defender raises the issue of the availability of a fair hearing or, in relation to rights of action arising before commencement of the Bill (including cases re-raised as mentioned above), substantial prejudice.

9. The Bill will predominantly be relevant to abuse that took place on or after 26 September 1964 and only exceptionally to abuse which took place before then. This is because it will not be relevant where a right to reparation has been extinguished through the law of prescription which, before 26 September 1984, applied to personal injuries. Before that date, a right will have been extinguished through prescription if it existed for a period of 20 years after becoming (or being deemed to become) enforceable without that period being interrupted by, for example, a court action being raised. In such cases, the right will remain extinguished as the Bill does not change the law on prescription.

Financial implications

Overview

10. The immediate financial implications of the Bill will fall on the Scottish Courts and Tribunal Service (SCTS) as the body responsible for the administration of the courts, and the Scottish Legal Aid Board (SLAB). These costs are estimated below.

11. There will of course also be an impact on the individuals and organisations that defend these cases, and, where applicable, their insurance providers. However, given the considerable number of factors involved (see paragraphs 29 to 38 and 45 to 49), not least the inevitable lack of data due to the nature of the abuse, estimates have not been provided for this category. The margins of uncertainty are simply too great for meaningful information to be provided. This Memorandum, therefore,

provides the Scottish Government's best estimates of the financial consequences of the Bill given the constraints involved.

Methodology

12. Child abuse has long been surrounded by secrecy, shame and taboo and it is only very recently that its prevalence and devastating impact has begun to come to light and be understood. This means that there are a number of challenges involved in estimating the financial implications of the Bill. These include lack of data on the number of child abuse survivors alive in Scotland today and lack of information on the likelihood of survivors being willing to raise civil actions. To date, there has only been a very small number of child abuse civil actions proceeding in the Scottish courts. This means that there is a distinct lack of information about the typical size of a damages award, the other costs involved and information about defenders. Given these challenges, the analysis presented here is, of necessity, based on rough estimations using the best information available. Nonetheless, in order to ensure conclusions are as robust as possible, different sets of data have been drawn on and compared as much as possible.

13. Whilst it is recognised that most child abuse goes unreported and reporting to the police is not a requirement to raise a civil action, crimes against children reported to the police have been used as a starting point in this Memorandum to be able to arrive at an estimate of the number of survivors abused post 1964 (as it is those cases to which the Bill will predominantly apply). Reporting to the police makes raising a civil action more likely since there is a record of a complaint which adds to the evidence-base for a claim and it indicates that the abused person has been able to bring their abuse to the attention of authorities and to seek punishment for the perpetrator. Reporting abuse to the police is also part of key advice given by support services and advice centres, such as the Citizens Advice Bureau. The number of serious offences against children reported since 1964 (since the Bill will predominantly be relevant to abuse that took place on or after 26 September 1964 – see paragraph 9 above) were therefore calculated.

14. Data on victims of crime is not generally available, so an estimate was created by using as a proxy the number of crimes recorded by police. This estimate used data on reports to the police of sexual and violent crimes against children between 1971 and 2015. Data prior to 1971 was not available so the number of crimes for the period 1964-1970 was extrapolated from the available data using an exponential trend line. Any cases of abuse recorded by the police between 1964 (the key year for the

Bill, as explained at paragraph 9 above) and 1996 are likely to be time-barred at present given that all survivors who were abused as children within that time period are now over 16 and the three year limitation period will have passed (unless the abuse was continuous and did not end at 16, or the limitation period was paused due to mental incapacity, etc.). However, for the more recent time period 1997 to 2015[1], a large proportion of abuse that was reported soon after it has happened will not yet be time barred since the survivor could be under the age of 16 or, if over 16, the three year limitation period may not yet have elapsed. Therefore only a proportion (7 – 26% depending on the year and the likelihood of cases being time barred) of the cases for that time period were included in the calculation. This provided an estimated total of approximately **40,000** cases of crimes against children reported to the police and for which the Bill is likely to be relevant. This reflects the number of child abuse cases reported to the police between 1964 and 2015, removing an estimated proportion of the more recent cases that are not yet affected by the three year limitation period and therefore do not currently need to rely on the changes made by the Bill.

15. The next stage of the calculation related to what proportion of these reported incidents of child abuse is likely to translate into civil actions. With very little existing information available, estimating this proportion is challenging. While recognising that any individual who has experienced abuse as a child may wish to raise an action and the law should do as much as it can to allow those individuals to do so, there may also be a range of reasons why an individual who has been abused may not wish or be able to do so:

- While any form of child maltreatment is abhorrent, the court will require evidence of an injury – most often a resultant psychiatric injury in abuse cases.
- Raising a civil action can be very challenging. It is often a lengthy process which may involve a lot of uncertainty and require a great deal of stamina. The psychological impact on a survivor of undertaking such an action can be significant. The process itself may involve seeing their abuser again and the survivor will be subjected to cross-examination. The nature of the abuse encourages shame and secrecy and many deal with its impact by suppressing the memories of it. For very good reasons, such as their own health and wellbeing, there may be a reluctance on the

[1] This is the latest year for which data is available.

part of the survivor to open up the issues again and revisit something that happened a long time ago. There may also be reluctance to take the perpetrator to court, in particular where the case involves a family member or acquaintance. While recognising that it is for survivors to make an informed choice about whether to raise a civil action, based on their own circumstances and what is right for them, it is clear from discussions with survivors that not all wish to do so and it will not be the solution for everyone.

- For survivors, the limitation period has served as a barrier to accessing justice and its removal is seen as an opportunity to hold their abuser to account. The aim of an action for damages is, however, to achieve financial compensation/redress. There will be a proportion of incidents of abuse where the perpetrator may not have the ability to pay damages. This is more likely in cases of abuse within the family compared to cases where the defender is an organisation. Individuals would most likely only be advised to raise a civil action for damages where the defender is able to pay.

16. Views were sought views from professionals who work with survivors of abuse, including support service professionals and personal injury lawyers, and, based on the information received and after careful consideration, it was estimated that **1 to 10%** of the **40,000** cases reported to the police will seek to raise civil actions once time bar is removed. This would result in around **400 to 4,000** potential pursuers.

17. In order to test this estimate against other sources of information, international comparisons and data on numbers of survivors currently in support services in Scotland were investigated. It is clear, however, that there is a very limited amount of data available on cases being brought as a result of changes to limitation periods in other jurisdictions. One international comparison that was possible was looking at states in the United States. In certain states, time bar on child abuse actions has been lifted for a period of time (so called 'window legislation'[2]) to enable out of time actions to be raised. Based on data from California, Delaware, Hawaii, and Minnesota, where window legislation has been in place for one to four years for childhood sexual abuse, between 125 and 1,150 claims per state arose as a result of the lifting of time bar. This suggests that lifting time bar

[2] For more information on window legislation, please see the Policy Memorandum.

gives rise to between **8 to 187** claims per million people in these states. Applying this number to Scotland and extrapolating to include other forms of child abuse[3] would suggest that between **100 and 2,400** survivors are likely to come forward in Scotland once time bar is removed. This is slightly below the range estimated above and would suggest the true number is towards the lower end of this range of 400 to 4,000. However, it should be noted that the statistics from the US states relate to different jurisdictions and different types of legislation (window legislation rather than a permanent removal of time bar). These jurisdictions have limitation regimes that are different to Scotland and are likely to have different litigation cultures. These numbers should, therefore, be treated with some caution. Similar legislation to this Bill has recently been passed in Victoria and New South Wales in Australia but it is understood from engagement with officials in those states that it is too early to draw conclusions about the impact of the legislation.

18. As a further comparison, the number of survivors currently supported through services targeted at survivors of child abuse in Scotland was also investigated. For many survivors, reaching a position where they will seek to raise a civil action will mean working through past trauma and building confidence, often through counselling or therapy Organisations that provide services for survivors of child abuse were therefore surveyed and this revealed that at least **2,960** survivors were supported through support services in 2015. From the national service for in-care abuse survivors, In-Care Survivors Service Scotland, it is known that at least **240** of these are survivors from abuse in institutions. In-Care Survivors Service Scotland also report that **930** in-care survivors have used their services since they were established in 2008. As noted above, survivors of in-care abuse are more likely to raise an action given that an organisation is more likely to have the funds to pay damages.

19. Finally, it is understood that there are around **1,000** survivors who previously tried to raise an action but failed on the time bar hurdle. The Bill allows these cases to be re-raised and they are likely to form part of the numbers coming forward. Some survivors who have accessed the national in-care support service since 2008 are within this group. While it is not expected that this figure of 1,000 will represent the total number of cases which now come forward (as some survivors may have previously opted

[3] Based on the NSPCC research 2011: see https://www.nspcc.org.uk/services-and-resources/research-and-resources/pre-2013/child-abuse-and-neglect-in-the-uk-today/

not to raise a case when they saw that other cases were failing on time bar grounds), the fact that this figure falls safely within the estimated range suggests that the estimated range is a credible one.

20. As noted above, given the lack of information available in this area, estimating the numbers likely to come forward to raise civil actions presents a range of methodological challenges. The above analysis therefore involves a number of estimates and assumptions. The estimated range of **400 to 4,000** new actions is wide, and the mid-point of **2,200** actions has been used. This falls within the range estimated from the US data which, although it may not be a perfect comparator, still provides an additional reference point for the likely scale of the impact. Moreover, this figure does not seem out of line with what is known about previously raised cases and the number of survivors supported through the national in-care service.

21. In modelling terms, it is therefore anticipated that there will be around 2,200 claims initially (representing the bottleneck of claims that has been prevented from proceeding until now due to the current limitation rules). It is unlikely that the cases will all present to the SCTS at the same time, rather they will be staggered based on how long it takes to gather evidence, etc. Some cases may already be at an advanced stage in these terms but others may not. Some claimants may want to wait to see how the courts decide the initial cases before proceeding. It may, therefore, take a few years for this initial group of cases to be raised. Thereafter, the number of cases being raised should be significantly smaller and steady.

22. In terms of impact on defenders, it has not been possible to confidently estimate how many organisations or individuals may be affected by this legislation. The Bill extends to childhood abuse in all settings, which might include, for example, residential child care facilities but also sports clubs and other organised activities as well as domestic and family settings. The 'in-care' landscape has been subject to significant changes over the past 50 years. In 2011, as part of work being carried out to inform figures for the National Confidential Forum, the Centre of Excellence for Looked After Children in Scotland (CELCIS) surveyed Scottish archives and social care organisations in order to compile a list of establishments providing residential child care. Its subsequent Report[4] listed a total of 449 residential establishments but acknowledged that the data was incomplete.

[4] National Confidential Forum for Adult Survivors of Childhood Abuse in Care - Scoping Project on Children in Care in Scotland, 1930 – 2005, Andrew Kendrick and Moyra Hawthorn, University of Strathclyde June 2012

The establishments were in the main a mixture of local authorities, trusts and charitable or religious institutions. A significant proportion of them (31%) are no longer operational.

23. The impact on any particular organisation will depend upon the prevalence of abuse which occurred; the number of children subject to abuse if it occurred; and the strength of the case against the organisation. There is very little information about the level of damages paid in Scotland for historical child abuse. In the one reported case in which the level of damages is set out, an award of £75,000 was made for solatium (meaning compensation for matters such as pain and suffering) for sustained sexual and non-sexual abuse. However, that is of course only one case and there is no way of knowing what level of award will typically be made in Scotland. It is clear that awards in England for solatium tend to be significantly lower than this.

Costs on the Scottish Administration

24. There will be no direct costs to the Scottish Administration beyond the impact on the SCTS as outlined below.

Costs to SCTS

25. A majority of respondents to the public consultation suggested that more actions will be raised in the civil courts as a result of this legislation. Most also agreed that since more actions will be raised, it follows that more cases will also result in court hearings (including the hearing of evidence). However, many also suggested that more cases may settle out of court. This could be because the preliminary issue of time bar would not need to be settled, which would reduce the amount of uncertainty. Institutions may also wish to mitigate against reputational and public image damage by settling out of court. Several respondents considered, however, that predictions are difficult to make due to the likely complexity of the cases and the fact that the individual circumstances of pursuers may vary considerably in whether or not they wish to go through the court process.

26. Nonetheless, it is clear that the majority of actions usually settle without being heard in court and usually only around 4% of personal injury actions go to a full proof. Using the estimated figure of 2,200 potential actions, statistics from SLAB suggest that around 20%[5] of these will go on

[5] This was the conversion rate identified by SLAB for the percentage of reparation cases that resulted in a civil legal aid application, based on its

to actually raise an action in court. This reflects the fact that some will decide against raising an action based on legal advice and others may secure a settlement without the need to go to court. Based on average costs[6] supplied by the SCTS which are intended to reflect the fact that cases which are raised will be disposed of at various stages in the court process, it is therefore estimated that the gross cost falling on the SCTS in dealing with the first tranche of cases (i.e. all of the actions which have been unable to proceed until now) will be £288,000. It is expected that these cases will be spread over a number of years given that they will be raised at different times and there will be variation in the length of time the court process takes. It is estimated that costs to SCTS will be spread over at least four years, with 5% of costs in year one, 60% in year two, 30% in year three, and 5% in year four. This equates to gross SCTS costs across the four years of, respectively, £14,400, £172,800, £86,400, and £14,400. However, under the current fee regime, around 80% of these costs (£230,400) will be recovered by the Scottish Government through fees, leaving a total of £57,600 unrecovered. It is worth noting that the Scottish Government is currently looking towards full costs recovery. It is also worth noting that some pursuers will be legally aided (50% of cases as estimated below) and will most likely be exempt from court fees.

27. There were mixed views in the consultation regarding the amount of court time required for cases. A majority of legal representatives and solicitor firms felt that less court time would be required, largely due to judges no longer needing to make decisions on exercising discretion over the time bar. On the other hand, some respondents suggested that complex cases with historic evidence may require more time in court (for

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data of cases that mentioned abuse in care in the application and which were then referenced in the civil legal aid application. This percentage is extrapolated here to apply to all cases, not just those that are legal aid funded.

[6] Costs are based on a number of different aspects to get an average of cost per case. This includes taking into account the different impact of different types of civil cases, the proportionate number of civil cases that are disposed of as ‘decrees in absence’ , the number that proceed as defended cases and those that actually have evidence led at proof. Costings also reflect a split of cases across the Court of Session, the Sheriff Court and the National Personal Injury Court and are based on the full cost of judicial and staff salaries and running costs.

example, if the defender asserts that the case should not proceed because a fair hearing will not be possible).

28. Depending on the actual experience of how much court time these cases may use, there could also be a knock-on impact on court programming. As detailed above, however, it is anticipated that the bringing of this initial tranche of cases will be staggered over at least a few years. It is not expected that additional judicial posts will need to be created as a result of these cases being brought and therefore judicial salaries are not likely to be affected. The initial and on-going costs will be considered by the Scottish Government as part of the overall budget allocation to the SCTS.

Costs on local authorities

29. The Bill applies equally across public and private sector bodies and, therefore, the new burden rules[7] do not apply. In any event, the Bill does not include a policy or initiative which increases the cost of providing local authority services, nor does it impose any new administrative duties or obligations on local authorities and so there are no direct costs to local authorities as a result of the Bill. Notwithstanding the above, it is clear there will be increased costs to local authorities as a result of defending any actions raised against them. Insurance policies to deal with historic compensation claims may be in place, but these policies will not cover non-recoverable back room costs. However, for a number of reasons it has not been possible to estimate costs to local authorities.

30. Firstly, as noted above, child abuse by its nature is often surrounded by secrecy and shame and there are often reputational concerns for organisations. Only a very small fraction of abuse comes to light. It has not been possible to identify any existing research which has attempted to map the prevalence of abuse in local authority run children's services. The lack of a comprehensive picture in relation to in-care abuse is one of the

[7] Under the "new burden" rules. where a new policy or initiative which increases the cost of providing local services is introduced, the relevant policy area is expected to either fully fund that new cost or agree with COSLA how the additional cost should be met. The new burden rules do not apply to policies which apply the same rules to local authorities and to private sector bodies (for example, changes in general taxation, or employment legislation that applies to all organisations), unless these have a disproportionate effect on local government.

reasons why the Scottish Child Abuse Inquiry was established in 2015. Although limited to in-care services, the Inquiry will raise public awareness of the prevalence of abuse of children. However, it is not considered appropriate to pre-empt the outcome of the inquiry.

31. Secondly, the impact on local authorities will depend on the individual cases brought. Some local authorities may be more affected than others but this is difficult to predict. The impact may depend on the extent of historical service provision for children, but it is also possible that the impact is unrelated to this. For example, a prevalent abuser in some organisations could have caused an uneven distribution of the prevalence of abuse. The practicality of surveying local authorities to establish their past children services provision was considered. However, it was concluded that this would place a disproportionate burden on local authorities. The length of the applicable time-span (over 50 years), which includes the restructuring of the local authority landscape, and the number of children's services involved over that time, means it would be extremely time and resource intensive for the authorities and it is still not clear how useful this information would be. The relevant services would not be limited to children's homes but would also include other local authority run provisions such as foster care arrangements, day care centres, community centres, and youth clubs, to name a few. Many of these are likely to no longer be in existence. The Scottish Government has met with CoSLA and it is clear from these discussions that local authorities face a number of challenges in identifying the potential number of cases that may be brought against local authorities.

32. Thirdly, the impact will also depend on the outcome of the cases. Some of the cases are likely to be very old, with limited ability for the relevant authority to present an adequate defence. Some of the cases raised against local authorities will not be able to proceed if it is demonstrated that a fair hearing cannot be achieved, but it is not possible to estimate what proportion of cases would be affected.

33. Fourthly, for the cases that are successful, the impact will depend on the size of the damages awards and the legal costs involved. It is likely that some authorities may choose to settle without going to court, which would limit the often very significant legal costs, but it is impossible to predict the proportion that will do so. As noted above, it is also difficult to predict the size of the damages award or settlement figures given that there have been so few reported historical child abuse court cases in Scotland.

34. In personal injury cases more generally there can be a reluctance to disclose settlement figures. In response to a Freedom of Information request to the 32 Scottish local authorities, the Scotland on Sunday reported in July 2015[8] that local authorities had paid out around £1.5 million in compensation to the victims of child abuse during the past decade. Not all authorities responded and some reported that no compensation payments had been made or that no information was held. The following breakdown was provided:- [9]

Local Authority	**Total Amount**	**No. of payments**	**Comment**
Dumfries & Galloway	£1 million	50	£20,000 each as an ex-gratia payment in relation to one children's home.
Fife Council	£369,000	Not provided on basis that it would contravene the Data Protection Act	Payments were made between October 2005 and December 2008 in relation to one children's home. A payment of £150 000 was paid to one former resident.
Glasgow City Council	£85,350	9	Compensation was paid in relation to 5 children's homes/units/assessment centres. Average payment: £9,500.

35. Although useful, it is unclear what conclusions can be drawn from this data. Amounts given out through ex-gratia payments would generally be lower than awards given out by the courts, reflecting the fact that such payments circumvent the time and effort involved in bringing a court case and would very much depend on the circumstances of the case.

[8] http://www.scotsman.com/news/politics/scots-councils-paid-1-5m-to-child-abuse-victims-1-3841084

[9] There is no further information beyond this on how the different Local Authorities responded.

36. In conclusion, given the lack of available information, the large number of unknowns and the challenges involved in gathering data in relation to the impact on local authorities, it was considered impractical and unrealistic to arrive at an estimated cost. With a distinct lack of information on the proportion of abuse that may have taken place in local authority run children's services, as well as a lack of information about past cases, it was not possible to estimate what proportion of the estimated 2,200 cases would be raised against local authorities.

37. The extent to which local authorities directly incur costs will vary depending upon the cover they have available to meet these claims. In some cases, local authorities will be able to identify an insurer, but in others this may not be possible given the changing landscape of local authorities over the last decades and the range of services where such abuse may have occurred. Any financial implications for local authorities will have the potential to impact adversely on the funding available for current and future services.

38. It is not possible to know whether local authorities will attempt to mitigate this by settling cases out of court, or whether they will wish to obtain a judicial determination. These are rightly matters for the local authority and they need to take a view on any contingent costs and manage these appropriately. It should also be noted that not all of these costs will arise as a result of the Bill. Under the current law, new claims in relation to historic child abuse could proceed in any case where the court decides it is equitable to do so: the liability therefore already exists. While the Bill is being brought forward because that discretion has very rarely been exercised so as to allow the pursuer to proceed, it is not unprecedented for it to be so exercised. Even without the Bill, it would be open to the courts to start taking a less strict approach whereby that discretion is exercised more readily. The Scottish Government has seen no evidence to suggest that is a likely outcome and the Bill is intended to ensure that more cases can proceed, but it is impossible to know what would have happened had the existing system of judicial discretion remained in place. If there were to be a material impact on budgets which creates difficulties for a local authority then, as with any significant pressure, it would be open to them to seek to discuss this with the Scottish Government.

Costs on other bodies, individuals and businesses

Costs to the Scottish Legal Aid Board

39. The purpose and policy objective of the Bill is to remove a barrier for child abuse actions in the civil courts and it follows that, as a result of the Bill, more actions should be raised and consequently more legal aid may be granted. However, as noted above, there is a great deal of uncertainty involved in estimating the likely number of survivors that will come forward, and there is also a lot of uncertainty around how many survivors will apply and qualify for legal aid.

40. It is clear that a majority of personal injury cases currently proceed under a 'no win, no fee' or other type of arrangement, but it is not clear whether the cases which are the target of the Bill will follow a similar pattern. In personal injury cases, solicitors assess the risks involved: cases which are straightforward and have a high chance of success are likely to proceed under a 'no win, no fee' arrangement. Some historical abuse cases may be complex and many of the consultation respondents suggested that investigations of older cases will require more preparation time on account of the work involved in tracing evidence, tracking down witnesses, identifying expert evidence for breach of duty and causation issues, and preparation on quantum. However, it was also argued that with no limitation issues to deal with, more cases will be settled out of court. Given the uncertainty in this area, the estimate of 50% of cases being legal aid funded was therefore used.

41. Using the estimated figure of 2,200 cases as a starting point, it is therefore assumed that 1,100 cases would be legal aid funded. SLAB estimates that this would translate into a cost of £616,000 for Advice and Assistance ('A&A'). Although it is expected that a large majority of A&A will be sought in year one, SLAB estimates, by looking at the current payment history of A&A reparation cases, that costs will be spread in the following way: 20% of costs (£123,200) in year one, 25% (£154,000) in year two, 25% (£154,000) in year three, 25% (£154,000) in year four, and 5% (£30,800) in year five.

42. A proportion of cases receiving A&A will settle before going to court, some are likely to decide against raising an action based on legal advice, and some will go on to apply for civil legal aid which provides funding for a solicitor to take the case to court. As noted above, SLAB estimates that around 20% will go on to raise an action in court. The cost of funding civil legal aid for successful applicants in this scenario is estimated by SLAB to

be £935,000, which will be spread over a number of years. If actions are raised in line with the pattern estimated at paragraph 26 above in relation to the SCTS costs (i.e. 5% in year one, 60% in year two, 30% in year three, and 5% in year four) then SLAB estimates that the gross civil legal aid costs will be spread in the following way: 1.25% (£11,700) in year one, 16.25% (£151,900) in year two, 23.75% (£222,000) in year three, 24.75% (£231,400) in year four, 21% (£196,400) in year five, 10.25% (£95,800) in year six, 2.5% (£23,400) in year seven, and 0.25% (£2,300) in year eight. These figures are all rounded to the nearest hundred and based on the gross cost to SLAB prior to any recovery of costs. There would also be an additional £35,200 in total for administration costs for applications where legal aid was not granted.

43. The total gross cost would therefore be £1,586,200 for A&A, civil legal aid and the additional administration cost. SLAB estimates that 67%[10] of cases would have expenses awarded, that is 67% of £935,000, which means that £626,450 would be recovered. The net total cost to the legal aid budget is therefore £959,750. The initial and on-going costs will be considered by the Scottish Government as part of the overall budget allocation to SLAB.

44. For clarity, legal aid does not include court fees, but whether or not the pursuer is legally aided is one of the criteria the court considers when deciding whether to exempt court fees. More than 90% of those who are exempted from court fees are exempted due to the fact that they are legally aided.

Costs to defenders other than local authorities

45. There will be additional costs to other organisations who find themselves as defenders in these cases. As in the case of local authorities, it may most likely be insurance providers that pay out in these cases. However, where an insurer was not in place or cannot be identified for the relevant period then the costs would fall directly on the organisation. Organisations such as current and former care providers, private schools, religious organisations and youth organisations are likely to be affected, and mapping these would be virtually impossible. Moreover, in some cases the defender will be an individual. It is also possible that insurance costs will rise to cover possible liability on the basis that a poor claim history will inevitably impact on the level of future insurance premiums for

[10] Standard percentage applied by the Scottish Legal Aid Board

individual organisations involved in defending claims, which could also have an impact on the sector as a whole. There may also be indirect costs associated with any reputational damage. Any financial implications for third sector organisations in particular will have the potential to impact adversely on the funding available for current and future services.

46. The same difficulties in estimating the costs for local authorities exist also for costs to other bodies, individuals and businesses. As with local authorities, the impact will depend on the individual cases brought and it is impossible to predict who will find themselves as defenders in these cases. The same unknowns with regards to the outcomes of the cases and the scale of the damages and legal costs also apply. It is also clear that some organisations and bodies are no longer in existence and some of the actions raised may relate to abuse in the home.

47. The Scottish Government has been engaging with organisations that represent insurance providers, such as the Association of British Insurers and the Forum of Scottish Claims Managers. While this engagement has been very constructive, most of the data these organisations hold on past claims and settlement figures is regarded as commercially sensitive which makes it difficult for them to share the relevant information.

48. Therefore, as with estimating costs for local authorities, it was considered impractical and unrealistic to quantify the costs for this potentially very wide category. Attempting to estimate costs could potentially mean arriving at a range which is so wide as to be a meaningless figure, while it was considered that adopting a narrower figure would be irresponsible and misleading in light of all the difficulties set out above.

49. Although there will be costs to organisations that find themselves as defenders, it is important to highlight that this legislation is likely to bring Scotland in line with other jurisdictions who have either implemented similar legislation or where a number of child abuse actions have been successful within the existing legal framework, such as in England and Wales. In terms of wider societal benefits, some respondents to the consultation referred to their experience in England where damages have enabled survivors to rebuild their lives and become more productive members of society with a consequential reduction on their reliance on NHS and other services.

Summary of estimated total financial implications

	Basis on which estimate reached	**Estimate**	**Estimated spread of costs**
Number of survivors seeking to raise a civil action	Based on likely range of 400 – 4,000.	2,200 cases	
Net cost to SCTS (not recovered from fees)	Based on 20% of these cases proceeding to a full court action at a cost of £288,000, but 80% of costs being recovered through court fees.	£57,600	Year 1 – 5% Year 2 – 60% Year 3 – 30% Year 4 – 5%
Net cost to the Scottish Legal Aid Board - Advice and Assistance (A&A)	Based on 50% of cases being legal aid funded (i.e. the A&A costs for 1,100 cases) and no cost recovery.	£616,000	Year 1 – 20% Year 2 – 25% Year 3 – 25% Year 4 – 25% Year 5 – 5%
Net cost to the Scottish Legal Aid Board - Civil Legal Aid	Based on 50% of cases being legal aid funded and 20% of cases going on to raise an action in court (i.e. the costs for 220 cases), but with 67% of costs being recovered through awards of expenses.	£308,600 for cases + £35,200 for administration non granted applications	Year 1 – 1.25% Year 2 – 16.25% Year 3 – 23.75% Year 4 – 24.75% Year 5 – 21%% Year 6 – 10.25% Year 7 – 2.5% Year 8 – 0.25%
Total direct cost to the Scottish Administration	Based on total net cost to SCTS.	£57,600	
Total quantifiable costs to the Scottish	Based on total net cost to SCTS and	£1,017,400	

Administration and others	SLAB (but not including the unascertainable costs to defenders)		

This document relates to the Limitation (Childhood Abuse) (Scotland) Bill (SP Bill 1) as introduced in the Scottish Parliament on 16 November 2016

Limitation (Childhood Abuse) (Scotland) Bill

Financial memorandum

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