

CIVIL LITIGATION (EXPENSES AND GROUP PROCEEDINGS) (SCOTLAND) ACT 2018

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Expenses in Civil Litigation

Section 10 – Third party funding of civil litigation

26. **Section 10** requires that a party receiving financial assistance from another person who is not a party to the proceedings must disclose to the court the identity of the funder and any intermediary, as well as details of the assistance being provided. In those cases where financial assistance is commercial in nature, or otherwise where a non-commercial funder is to receive a share of any damages, the nature of the funder's financial interest must be disclosed once the dispute has been resolved. The court may then make an award of expenses against the funder and any intermediary. Subsection (4) provides that financial assistance under a success fee agreement or from a trade union or staff association is not to be treated as commercial funding. Subsection (5) is a more extensive exemption for close family funding of family proceedings¹, with the effect that the fact of financial assistance does not need to be disclosed to the court under subsection (2). Subsection (6) makes clear that payments from the Scottish Legal Aid Fund fall outside of section 10. There is already a requirement for legal aid funding to be disclosed under rule 3 of the Act of Sederunt (Civil Legal Aid Rules) 1987². Finally, under subsection (7), further provision relating to these issues may be made in court rules by means of an act of sederunt.

¹ For the purposes of this section, family proceedings are defined in Section 10(6) of the Act.

² Act of Sederunt (Civil Legal Aid Rules) 1987 S.I. 1987 No. 492 (S.46)