

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Auditors of Court

Section 14 – Auditors of court

30. **Section 14** makes provision for the continuation of the offices of the Auditor of the Court of Session, the auditor of the Sheriff Appeal Court, and auditor of the sheriff court. These are collectively known as auditors of court. The office of the Auditor of the Court of Session currently has a statutory basis in the Court of Session Act 1821 whereas the other auditors of court exist by virtue of commissions issued by the President of the Sheriff Appeal Court and the sheriffs principal of the sheriffdoms, respectively. Section 14 gives all auditors of court a statutory basis.
31. Subsections (3) and (4) provide that the Scottish Courts and Tribunal Service (“SCTS”) is responsible for the appointment of individuals to these offices and the terms of appointment. Subsection (5) sets out that all these auditors of court will be members of SCTS staff¹. Subsection (6) provides that the Auditor of the Court of Session will continue to be a member of the College of Justice². Subsection (7) gives effect to the schedule of modifications of enactments concerning the auditors of court (as further described in paragraphs 53 to 56).

Section 15 – Temporary Auditor of the Court of Session

32. **Section 15** empowers the Lord President of the Court of Session to appoint a person to act as the Auditor of the Court of Session where the office of Auditor is vacant or the office-holder is otherwise unable to carry out the functions of office.

Section 16 – Auditors’ functions

33. **Section 16** sets out the functions of the auditors of court. Subsection (1) provides that it is their role to carry out judicial taxations³ and other functions set out for that office in other enactments (the word “enactment” here includes rules of court by

¹ “Auditors of court” are to become office-holders in the Scottish Administration by virtue of the Scottish Administration (Offices) Order 2018. Section 64(3) of the Scotland Act 1998 requires office-holders in the Scottish Administration to pay sums received into the Scottish Consolidated Fund. In the case of auditors of court this will include receipts from extra-judicial taxations. Extra-judicial taxation is the determination of expenses relating to a litigation which have not been awarded by a court or tribunal but requested by the parties.

² The judges of the Court of Session are the Senators of the College of Justice. Advocates, Writers to the Signet, Solicitors to the Supreme Courts, Macers and Supreme Courts staff are also all considered to be members of the College of Justice. Membership of the College does not, today, have any practical consequences. Nevertheless, the existence and membership of the College has a symbolic importance, as it reflects the commitment of all the members of the College to the administration of justice in the Supreme Courts of Scotland, and their involvement, through their different roles, in that common endeavour.

³ “Judicial taxation” is the process where the amount properly payable by virtue of an award of expenses is determined. The auditor through the process of taxation adjudicates on disputes as to that amount, applying the law as to expenses to the factual position. The amounts may be significant to the parties.

These notes relate to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (asp 10) which received Royal Assent on 5th June 2018

virtue of schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010). Subsection (2) makes express provision that an auditor can carry out other taxations. Subsection (3) allows more specifically for sheriff court auditors to tax accounts relating to actions in any of the sheriff courts in Scotland. This is a break from previous practice in terms of which a commission as sheriff court auditor would only cover one sheriffdom.

Section 17 – Auditors unable to tax account

34. **Section 17** deals with the situation where none of the employed auditors of court are able to tax a particular account of expenses. The section provides that the account is to be taxed by a person who is not an auditor of court. Such persons might be retired auditors, or experienced solicitors, or law accountants.

Section 18 – Guidance

35. This section confers a duty on the Auditor of the Court of Session to issue written guidance to the other auditors of court about the exercise of their functions. Subsection (2) provides that this guidance may include the types and levels of expenses that may be allowed in a taxation. Subsection (3) provides that guidance is to have the objective of auditors of court acting consistently and transparently. The other auditors of court (as well as the sheriff court auditors, any Temporary Auditor of the Court of Session and persons dealing with accounts under section 17) are, under subsection 4, required to have regard to the guidance. Subsection 5 details that the guidance must be published in writing and subsection 6 details that it may be revised as appropriate from time to time. It should be noted however that, under section 15(3)(b), a Temporary Auditor of the Court of Session does not have authority to issue or revise guidance.

Section 19 – Reports

36. **Section 19** places a duty on the SCTS to publish an annual report of the number of judicial and other taxations carried out by auditors of court during a financial year and the payments received for that work. This includes work done by persons appointed under sections 15 or 17. Subsection (4) defines a 'judicial taxation' for the purposes of the report.