

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

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4: Group Proceedings**

##### ***Section 20 – Group proceedings***

37. **Section 20** provides for a new court procedure known as “group procedure” that will be available only in the Court of Session. Group proceedings are similar to what is known as “multi-party actions” or “class actions” in other jurisdictions. Group procedure is intended to be available for both private law and public law (judicial review) proceedings.
38. By virtue of subsection (7) and section 21, group procedure rules may provide for group proceedings to be brought on an “opt-in” basis, an “opt-out” basis, or both. These terms are defined in subsection (8). By virtue of section 21(2)(c) group procedure rules may set out in more detail precisely how parties are to opt-in or opt-out of a group, as appropriate. It should be noted that the definition of “opt-out proceedings” provides that where parties are not domiciled in Scotland, they must always opt-in to proceedings even in “opt-out” procedure. Section 22(2)(a) makes provision for domicile to be defined for this purpose.
39. Subsection (2) sets out the circumstances in which a representative party may bring group proceedings. Although there is no upper limit on the numbers in the group, there must be at least two people within the group. Each member must have a separate claim in the proceedings.
40. Subsection (3) provides that the representative party may or may not be a member of the group. In other words, the representative party may be a public interest body that does not directly have a claim in the proceedings. A person must, however, be authorised by the Court as the representative party and further provision may be made about this in rules made by act of sederunt under section 21(1) and (2)(a). Subsection 4 of Section 20 also details that there may only be one representative party.
41. Subsection (5) requires that group proceedings may only be brought with the permission of the Court. Subsection (6) provides that permission will only be given if the claims made in the proceedings are related to each other and all reasonable efforts have been made by the representative party to make potential group members aware of the proceedings (which will include making them aware of their right to opt-in or opt-out as appropriate). An act of sederunt under section 21(1) may make further provision about circumstances in which permission may be refused. It should also be noted that in the case of opt-out proceedings only, subsection (8)(b) requires the Court to designate a group description.
42. Subsection (9) confers authority on the representative party to represent each member in the group and make decisions in group proceedings on those members’ behalf. This

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

is subject to any limiting provision in the agreement between the group or in an act of sederunt under section 21(1).

43. Subsection (10) provides that group proceedings will not be jury actions by virtue of section 11 of the Court of Session Act 1988.