

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Group Proceedings

Section 21 – Group procedure: rules

44. **Section 21** gives the Court of Session the power to make provision by an act of sederunt about group procedure. By virtue of section 30(1) of the Interpretation and Legislative Reform (Scotland) Act 2010, acts of sederunt are subject to “laid only” procedure in the Scottish Parliament.
45. Subsection (2) gives non-exhaustive examples of things about which provision may be made. This list includes:
 - who can bring proceedings on behalf of the group;
 - what actions are to be taken by a representative party, for example, whether they must draw up a scheme of division for damages claimed or other documentation;
 - the types of claims that are excluded from group procedure;
 - rules about refusal of permission to bring group proceedings and appeal against a decision to grant or refuse permission;
 - rules about group proceedings not being subject to the exclusive competence limit in the sheriff court, as provided for in section 39 of the Courts Reform (Scotland) Act 2014. Under this section, a case of a value of £100,000 or less must be heard in the sheriff court unless permission is granted for the case to be heard in the Court of Session. As group proceedings are confined to the Court of Session, section 39 may need to be modified or disapplied in relation to them;
 - rules about adding claims to or removing claims from group proceedings after they have been commenced; and
 - what actions taken by the representative party will need the Court’s permission.
46. Subsection (3) ensures that any rules made under an act of sederunt will not contradict the requirements of section 20. Subsection (4) makes provision about ancillary matters which may be incorporated in the rules and allows the rules to modify enactments and to make different provision for different purposes. Subsection (5) clarifies that this section does not affect any other power the Court has to regulate its practice and procedure.