

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

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Success Fee Agreements

Section 2 – Enforceability

9. **Section 2** provides that a success fee agreement, and in particular a damages based agreement, is not unenforceable only because it is *pactum de quota litis* (that is, an agreement by a legal provider to accept a share of the proceeds of the litigation if it is successful, which would, but for this provision, otherwise be unenforceable). This means that solicitors in Scotland will be able for the first time to enter into damages based agreements. Damages based agreements can now be arranged between providers and clients regardless of whether the recipient of the services receives them directly from the supplier (where the arrangement is between a client and their solicitor for proceedings in the sheriff court) or via services arranged by the provider (a solicitor instructing an advocate on the client's behalf, or a claims management company instructing a solicitor and/or an advocate). Subsection (2) provides that the abolition of the rule against an agreement for a share of the litigation does not affect other grounds under which a success fee agreement may be unenforceable under the law of contract.