

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Expenses in Civil Litigation

Section 8 – Restriction on pursuers’ liability for expenses in personal injury claims

24. **Section 8** makes provision for a qualified one-way costs shifting (“QOCS”) regime in Scotland for claims for personal injuries and appeals in civil proceedings for personal injuries, including clinical negligence. Subsections (1) and (2) provide together that the court must not make an award of expenses against the pursuer of the claim or appeal for personal injuries where they have conducted proceedings in an appropriate manner. Subsection (3) makes it clear that this does not prevent the court from making an award of expenses in relation to any other type of claim made in the same set of proceedings. Subsection (4) sets out the tests for considering if the person has acted in an inappropriate manner: these are fraudulent acts (including but not limited to fraudulent representations), manifestly unreasonable behaviour, and other abuses of process. Subsection (5) sets out that the standard of proof for fraudulent actings in subsection (4)(a) is the balance of probabilities. Subsection (6) gives the court the power to restrict the types of claims to which QOCS can be applied by an act of sederunt under section 103(1) or section 104(1) of the Courts Reform (Scotland) Act 2014. Subsection (7) explains what is meant by “personal injuries” in this section. That term includes diseases as well as physical or mental impairment.