



Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

2018 asp 10

PART 2

EXPENSES IN CIVIL LITIGATION

8 Restriction on pursuer's liability for expenses in personal injury claims

- (1) This section applies in civil proceedings where—
 - (a) the person bringing the proceedings makes a claim for damages for—
 - (i) personal injuries, or
 - (ii) the death of a person from personal injuries, and
 - (b) the person conducts the proceedings in an appropriate manner.
- (2) The court must not make an award of expenses against the person in respect of any expenses which relate to—
 - (a) the claim, or
 - (b) any appeal in respect of the claim.
- (3) Subsection (2) does not prevent the court from making an award in respect of expenses which relate to any other type of claim in the proceedings.
- (4) For the purposes of subsection (1)(b), a person conducts civil proceedings in an appropriate manner unless the person or the person's legal representative—
 - (a) makes a fraudulent representation or otherwise acts fraudulently in connection with the claim or proceedings,
 - (b) behaves in a manner which is manifestly unreasonable in connection with the claim or proceedings, or
 - (c) otherwise, conducts the proceedings in a manner that the court considers amounts to an abuse of process.
- (5) For the purpose of subsection (4)(a), the standard of proof is the balance of probabilities.

Status: Point in time view as at 30/06/2021. This version of this part contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, PART 2. (See end of Document for details)

- (6) Subsection (2) is subject to any exceptions that may be specified in an act of sederunt under section 103(1) or 104(1) of the Courts Reform (Scotland) Act 2014.
- (7) In subsection (1)(a), “personal injuries” include any disease and any impairment of a person's physical or mental condition.

Commencement Information

II S. 8 in force at 30.6.2021 by S.S.I. 2021/125, reg. 2(a) (with reg. 3)

PROSPECTIVE

9 Representation free of charge

- (1) This section applies in civil proceedings where—
- (a) a party to the proceedings is represented by a legal representative, and
 - (b) some (or all) of that representation is provided free of charge.
- (2) The party must disclose to the court the fact that some (or all) of the representation is provided free of charge.
- (3) The court may order a person to make a payment to the charity designated under subsection (5) in respect of the representation which was provided free of charge.
- (4) In considering whether to make an order under subsection (3) and the terms of such an order, the court must have regard to—
- (a) whether, had the representation not been provided free of charge, the court would have awarded expenses in respect of the representation, and
 - (b) if so, what the terms of the award would have been.
- (5) For the purposes of subsection (3), the Lord President of the Court of Session must designate a charity which—
- (a) is registered in the Scottish Charity Register, and
 - (b) has a charitable purpose (however described) of improving access to justice in respect of civil proceedings in Scotland.
- (6) Subsection (3) does not apply in relation to representation provided under section 28 of the Equality Act 2006 (legal assistance).
- (7) In this section, “free of charge” means otherwise than for or in expectation of a fee, gain or reward.

PROSPECTIVE

10 Third party funding of civil litigation

- (1) This section applies where a party to civil proceedings receives financial assistance in respect of the proceedings from another person (whether directly or through an intermediary) who is not a party to the proceedings (“the funder”).

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- (2) The party receiving financial assistance must disclose to the court—
 - (a) if known to the party, the identity of the funder and any intermediary, and
 - (b) the nature of the assistance being provided.
- (3) If the funder has a financial interest in respect of the outcome of the proceedings—
 - (a) the party receiving the assistance must disclose that interest to the court once the substantive issues in dispute in the proceedings have been decided or otherwise resolved, and
 - (b) the court may make an award of expenses against the funder and any intermediary.
- (4) Subsection (3) does not apply where the assistance is provided—
 - (a) under a success fee agreement (within the meaning of section 1),
 - (b) by a trade union or similar body which represents the interests of workers.
- (5) This section does not apply where the assistance is provided in respect of family proceedings by—
 - (a) the spouse or civil partner of the party receiving the assistance,
 - (b) a person living with the party as if they were married to each other,
 - (c) a parent of the party,
 - (d) a child of the party,
 - (e) a sibling of the party (whether of the full-blood or of the half-blood).
- (6) For the purposes of this section—

“family proceedings” has the same meaning as in section 135 of the Courts Reform (Scotland) Act 2014,

“financial assistance” does not include a payment from the Scottish Legal Aid Fund.
- (7) This section is subject to an act of sederunt under section 103(1) or 104(1) of the Courts Reform (Scotland) Act 2014.

PROSPECTIVE

11 Awards of expenses against legal representatives

- (1) This section applies in civil proceedings where the court considers that a legal representative of a party to the proceedings has committed a serious breach of that representative's duties to the court.
- (2) The court may make an award of expenses against the legal representative.
- (3) This section is subject to any limitations that may be specified in an act of sederunt under section 103(1) or 104(1) of the Courts Reform (Scotland) Act 2014.

12 Minor and consequential modifications of the Courts Reform (Scotland) Act 2014

- (1) The Courts Reform (Scotland) Act 2014 is amended as follows.

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Changes to legislation: There are currently no known outstanding effects for the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, PART 2. (See end of Document for details)

- (2) In section 81(5)(b) (expenses in simple procedure cases), for “unreasonably” substitute “in a manner which is manifestly unreasonable”.
- (3) In section 103(2) (examples of how the power to regulate procedure and practice in the Court of Session may be exercised)—
- (a) in paragraph (j), for “to parties to” substitute “in”,
 - (b) in paragraph (k), after “parties” insert “or persons representing such parties”.
- (4) In section 104(2) (examples of how the power to regulate procedure and practice in the sheriff court and Sheriff Appeal Court may be exercised)—
- (a) in paragraph (j), for “to parties to” substitute “in”,
 - (b) in paragraph (k), after “parties” insert “or persons representing such parties”.

Commencement Information

I2 S. 12(1)(3)(4) in force at 30.1.2019 by S.S.I. 2018/368, **reg. 2(e)**

I3 S. 12(2) in force at 30.6.2021 by S.S.I. 2021/125, **reg. 2(b)** (with **reg. 3**)

13 Meaning of “legal representative”

In this Part, “legal representative” means—

- (a) a solicitor enrolled in the roll of solicitors kept under section 7 of the Solicitors (Scotland) Act 1980,
- (b) a member of the Faculty of Advocates,
- (c) any other person who may exercise a right of audience or conduct litigation in civil proceedings on behalf of a party to the proceedings.

Commencement Information

I4 S. 13 in force at 30.6.2021 by S.S.I. 2021/125, **reg. 2(c)** (with **reg. 3**)

Status:

Point in time view as at 30/06/2021. This version of this part contains provisions that are prospective.

Changes to legislation:

There are currently no known outstanding effects for the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, PART 2.