



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

## 2018 asp 10

### PART 2

#### EXPENSES IN CIVIL LITIGATION

PROSPECTIVE

#### **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.

*Status: 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)*

- (5) For the purpose of subsection (4)(a), the standard of proof is the balance of probabilities.
- (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.

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”).
- (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

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- (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.
- (2) In section 81(5)(b) (expenses in simple procedure cases), for “unreasonably” substitute “in a manner which is manifestly unreasonable”.

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- (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

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

PROSPECTIVE

### 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.

**Status:**

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