

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

## 2018 asp 10

### PART 4

#### GROUP PROCEEDINGS

#### **20 Group proceedings**

- (1) There is to be a form of procedure in the Court of Session known as “group procedure”, and proceedings subject to that procedure are to be known as “group proceedings”.
- (2) A person (a “representative party”) may bring group proceedings on behalf of two or more persons (a “group”) each of whom has a separate claim which may be the subject of civil proceedings.
- (3) A person may be a representative party in group proceedings—
  - (a) whether or not the person is a member of the group on whose behalf the proceedings are brought,
  - (b) only if so authorised by the Court.
- (4) There is to be no more than one representative party in group proceedings.
- (5) Group proceedings may be brought only with the permission of the Court.
- (6) The Court may give permission—
  - (a) only if it considers that all of the claims made in the proceedings raise issues (whether of fact or law) which are the same as, or similar or related to, each other,
  - (b) only if it is satisfied that the representative party has made all reasonable efforts to identify and notify all potential members of the group about the proceedings, and
  - (c) in accordance with provision made in an act of sederunt under section 21(1).
- (7) An act of sederunt under section 21(1) may provide for group proceedings to be brought as—
  - (a) opt-in proceedings,

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*Status: This is the original version (as it was originally enacted).*

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- (b) opt-out proceedings, or
  - (c) either opt-in proceedings or opt-out proceedings.
- (8) In subsection (7)—
- (a) “opt-in proceedings” are group proceedings which are brought with the express consent of each member of the group on whose behalf they are brought,
  - (b) “opt-out proceedings” are group proceedings which are brought on behalf of a group, each member of which has a claim which is of a description specified by the Court as being eligible to be brought in the proceedings and—
    - (i) is domiciled in Scotland and has not given notice that the member does not consent to the claim being brought in the proceedings, or
    - (ii) is not domiciled in Scotland and has given express consent to the claim being brought in the proceedings.
- (9) In group proceedings, the representative party may—
- (a) make claims on behalf of the members of the group,
  - (b) subject to provision made in an act of sederunt under section 21(1), do anything else in relation to those claims that the members would have been able to do had the members made the claims in other civil proceedings.
- (10) Section 11 of the Court of Session Act 1988 (jury actions) does not apply to group proceedings.

## **21 Group procedure: rules**

- (1) The Court of Session may make provision by act of sederunt about group procedure.
- (2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about—
- (a) persons who may be authorised to be a representative party,
  - (b) action to be taken by a representative party in connection with group proceedings (whether before or after the proceedings are brought),
  - (c) the means by which a person may—
    - (i) give consent for the person’s claim to be brought in group proceedings,
    - (ii) give notice that the person does not consent to the person’s claim being brought in group proceedings,
  - (d) types of claim that may not be made in group proceedings,
  - (e) circumstances in which permission to bring group proceedings may be refused,
  - (f) appeals against the granting or refusal of such permission,
  - (g) the disapplication or modification of section 39 of the Courts Reform (Scotland) Act 2014 (exclusive competence of the sheriff court) in relation to group proceedings,
  - (h) the making of an additional claim in group proceedings after the proceedings have been brought (including the transfer of a claim made in other civil proceedings),
  - (i) the exclusion of a claim made in group proceedings from the proceedings (including the transfer of the claim to other civil proceedings),
  - (j) the replacement of a representative party,

- (k) steps that may be taken by a representative party only with the permission of the Court.
- (3) Nothing in an act of sederunt under subsection (1) is to derogate from section 20.
- (4) An act of sederunt under subsection (1) may make—
  - (a) incidental, supplementary, consequential, transitional, transitory or saving provision,
  - (b) provision amending, repealing or revoking any enactment relating to matters with respect to which an act of sederunt under subsection (1) may be made,
  - (c) different provision for different purposes.
- (5) This section is without prejudice to—
  - (a) any enactment that enables the Court to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or
  - (b) the inherent powers of the Court.
- (6) In subsection (2), “representative party” is to be construed in accordance with section 20(2).

## **22 Group proceedings: further provision**

- (1) The Scottish Ministers may by regulations make further provision in connection with group proceedings.
- (2) Regulations under subsection (1) may, in particular, make provision for or about—
  - (a) circumstances in which a person is domiciled in Scotland for the purposes of section 20(8)(b),
  - (b) prescriptive or limitation periods in relation to claims brought in group proceedings,
  - (c) the assessment, apportionment and distribution of damages in connection with such proceedings, including the appointment of persons to give advice about those matters.
- (3) Regulations under subsection (1) may modify any enactment.