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## EXPLANATORY NOTE

*(This note is not part of the Act of Sederunt)*

This Act of Sederunt amends the Rules of the Court of Session 1994, the Act of Sederunt (Sheriff Appeal Court Rules) 2015, the Ordinary Cause Rules 1993 and the Summary Cause Rules 2002.

Section 8 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”) introduces a procedure known as “Qualified One-Way Costs Shifting”. Section 8 of the Act makes provision in civil proceedings for damages for personal injury or death to the effect that the court must not make an award of expenses against the person bringing the action or the appeal arising therefrom, even if the person fails in their claim, provided the person has conducted the proceedings in an appropriate manner. Section 8(4) of the Act sets out exceptions to that principle whereby such a person, or their legal representative, may be held not to have conducted proceedings in an appropriate manner. Section 8(6) of the Act provides that further exceptions may be specified by Act of Sederunt.

This instrument makes amendments to the Rules of the Court of Session, the Sheriff Appeal Court Rules, the Ordinary Cause Rules and the Summary Cause Rules to add a new Chapter to each set of rules. In each case it specifies further exceptions, in terms of section 8(6) of the Act, and establishes court procedure for assessing whether exceptions apply.

The instrument provides that where the court makes an award of expenses on the ground that the pursuer has failed to beat a tender, or unreasonably delayed in accepting it, the liability of that person to the applicant, or applicants, lodging the tender is not to exceed expenses incurred by the applicant after the date of the tender, and is limited to an aggregate sum, payable to all applicants (if more than one) of 75% of the amount of damages awarded to the pursuer.

In each case the relevant new Chapter provides that an application may refer to one or more of the exceptions set out in section 8(4) of the Act and in the instrument itself. The instrument provides that applications are to be in writing, made by way of motion procedure in the Court of Session, the Sheriff Appeal Court and in ordinary causes in the sheriff court, and by way of incidental application in summary causes; and that such an application must be made before the pronouncing of an interlocutor disposing of the expenses of the action or, as the case may be, the appeal.