

# Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

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## Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Success fee agreements: claims management services**

18, 19, 20, 20A, 21, 22, 23, 24, 25, 26, 30, 65

#### **Success fee agreements: exclusion of certain matters**

27, 28, 29

#### **Personal injury claims: use of damages for future loss in calculation of success fee**

57, 58, 59, 31

#### **Independent advice about success fee agreements**

63

#### **Success fee agreements: multiple providers**

32

#### **Power to make further provision about success fee agreements**

33

#### **Restriction of pursuer's liability for expenses in environmental proceedings**

60

#### **Pursuer's liability for expenses in personal injury claim: circumstances of pursuer and defender**

1, 2, 3, 9

#### **Grounds on which pursuer may be liable for expenses in personal injury claim**

34, 4, 35, 5, 36, 6, 7, 8, 10, 40, 47, 48, 49, 17

**Pursuer's liability for court fees in personal injury claim**

11, 64, 16

**Free representation**

37, 38, 39

**Third party funding**

41, 42, 43, 44, 61, 45, 46, 12

**Auditors of court**

51, 52, 50, 53, 54

**Group proceedings: opt-out proceedings**

13, 14, 15

**Post-legislative review**

55, 62, 56

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**Amendments in debating order**

**Success fee agreements: claims management services**

**Annabelle Ewing**

18 In section 1, page 1, line 9, leave out <legal>

**Annabelle Ewing**

19 In section 1, page 1, line 16, leave out <subsection (1)> and insert <this section>

**Annabelle Ewing**

20 In section 1, page 1, line 16, at end insert—

<“claims management services” means services consisting of the provision of advice or services, other than legal services, in connection with the making of a claim for damages or other financial benefit, including—

(a) advice or services in relation to—

(i) legal representation,

(ii) the payment or funding of costs associated with making the claim,

(b) referring or introducing one person to another,

(c) making inquiries,

“legal services” means services consisting of the provision of legal advice, assistance or representation,>

**Daniel Johnson**

20A As an amendment to amendment 20, line 2, after <means> insert <regulated>

**Annabelle Ewing**

21 In section 1, page 1, line 18, leave out <legal>

**Annabelle Ewing**

22 In section 1, page 1, line 18, leave out from second <services> to <representation> in line 19 and insert <legal services or claims management services provided>

**Annabelle Ewing**

23 In section 1, page 1, line 23, leave out <In subsection (2),>

**Annabelle Ewing**

24 In section 1, page 2, line 6, leave out <legal>

**Annabelle Ewing**

25 In section 3, page 2, line 14, leave out <legal>

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**Annabelle Ewing**

- 26 In section 3, page 2, line 22, leave out <legal>

**Annabelle Ewing**

- 30 In section 6, page 3, line 20, leave out <legal>

**Gordon Lindhurst**

- 65 In section 22, page 11, line 4, at end insert—

<( ) Regulations under subsection (2) must not be made until the transfer to the Financial Conduct Authority of the regulation of claims management services under and in terms of the Financial Guidance and Claims Act 2018 has come into effect.>

**Success fee agreements: exclusion of certain matters**

**Annabelle Ewing**

- 27 In section 5, page 3, line 10, leave out from beginning to <other> in line 11

**Annabelle Ewing**

- 28 In section 5, page 3, line 12, at end insert—

<( ) Regulations under subsection (1) may relate to all success fee agreements or to success fee agreements of a description specified by the Scottish Ministers in the regulations.>

**Annabelle Ewing**

- 29 In section 5, page 3, leave out lines 13 and 14

**Personal injury claims: use of damages for future loss in calculation of success fee**

**Margaret Mitchell**

- 57 In section 6, page 3, line 27, leave out <may> and insert <must not>

**Margaret Mitchell**

- 58 In section 6, page 3, line 30, leave out from <if> to end of line 9 on page 4

**Margaret Mitchell**

- 59 In section 6, page 4, line 12, leave out subsection (8)

**Annabelle Ewing**

- 31 In section 6, page 4, line 15, at end insert—

<( ) In subsection (6)(b), “actuary” means an Associate or Fellow of the Institute and Faculty of Actuaries.>

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### **Independent advice about success fee agreements**

**Margaret Mitchell**

- 63** In section 7, page 4, line 23, at end insert—
- <( ) the circumstances in which the provider ("A") must ensure that, prior to the agreement being entered into, the recipient receives advice from another provider independent of A ("B") on B's assessment of whether it is in the recipient's best interests to enter into such an agreement with A,>

### **Success fee agreements: multiple providers**

**Annabelle Ewing**

- 32** In section 7, page 4, line 27, at end insert—
- <( ) the application of this Part, or any provision made under it, where a recipient receives relevant services from more than one provider in connection with the same matter.>

### **Power to make further provision about success fee agreements**

**Annabelle Ewing**

- 33** In section 7, page 4, line 28, leave out <Part> and insert <section so as to—
- (a) add text to it,
  - (b) modify any text added under paragraph (a)>

### **Restriction of pursuer's liability for expenses in environmental proceedings**

**John Finnie**

- 60** In section 8, page 4, line 33, after <claim> insert <—
- (i) in relation to a matter which is subject to, or said to be subject to, the provisions of the Aarhus Convention (the United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters done at Aarhus, Denmark on 25th June 1998), or
  - (ii)>

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**Pursuer's liability for expenses in personal injury claim: circumstances of pursuer and defender**

**Liam Kerr**

1 In section 8, page 4, line 36, at end insert—

<(c) the person has no funder, and

(d) it appears to the court that the defender is—

(i) a person who is insured in respect of the claim for damages,

(ii) a person who is not insured but in respect of whose liability in respect of the claim for damages the Motor Insurers' Bureau (a company limited by guarantee and incorporated under the Companies Act 1929 on 14th June 1946) will be liable to make payment, or

(iii) a public authority.>

**Liam Kerr**

2 In section 8, page 4, line 36, at end insert <and

( ) the person is not in receipt of third party funding within the meaning given by section 10.>

**Liam Kerr**

3 In section 8, page 4, line 36, at end insert <and

( ) the person is not in receipt of assistance from the Scottish Legal Aid Fund.>

**Liam Kerr**

9 In section 8, page 5, line 18, at end insert—

<( ) In subsection (1)(c), “funder” has the same meaning as in section 10(1).>

**Grounds on which pursuer may be liable for expenses in personal injury claim**

**Annabelle Ewing**

34 In section 8, page 5, line 8, after <person> insert <or the person's legal representative>

**Liam Kerr**

4 In section 8, page 5, line 9, at beginning insert <has acted fraudulently in connection with the claim or proceedings, or>

**Annabelle Ewing**

35 In section 8, page 5, line 9, leave out <makes a fraudulent representation> and insert <acts in a fraudulent manner>

**Liam Kerr**

5 In section 8, page 5, line 9, leave out <in connection with the proceedings>

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**Annabelle Ewing**

- 36 In section 8, page 5, line 10, leave out from first <the> to <civil> in line 11 and insert <is manifestly unreasonable in connection with the>

**Liam Kerr**

- 6 In section 8, page 5, line 11, at end insert—  
<( ) fails to beat a tender made in the proceedings,  
( ) fails to beat an offer made prior to the commencement of the proceedings, or>

**Liam Kerr**

- 7 In section 8, page 5, line 11, at end insert—  
<( ) in the opinion of the court, unreasonably fails to accept a settlement offer made under the pre-action protocol mentioned in section 22(2B), or>

**Liam Kerr**

- 8 In section 8, page 5, line 13, at end insert—  
<( ) For the purposes of subsection (1)(b), a person is to be deemed not to have conducted civil proceedings in an appropriate manner if the proceedings are summarily dismissed by the court.>

**Liam Kerr**

- 10 In section 8, page 5, line 18, at end insert—  
<( ) In subsection (4), references to proceedings include all actions of the person in respect of the claim for damages, whether before or after proceedings have been served.>

**Annabelle Ewing**

- 40 In section 9, page 5, leave out lines 31 to 36

**Annabelle Ewing**

- 47 In section 11, page 6, leave out line 24

**Annabelle Ewing**

- 48 In section 12, page 6, line 26, at end insert—  
<( ) In section 81(5)(b) (expenses in simple procedure cases), for “unreasonably” substitute “in a manner which is manifestly unreasonable”.>

**Annabelle Ewing**

- 49 After section 12, insert—  
<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,

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- (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.>

### **Liam Kerr**

**17** In section 22, page 11, line 4, at end insert—

<(2A) Regulations under subsection (2) must not appoint a day for the coming into force of section 8 in respect of a claim for damages arising from alleged clinical negligence unless the condition in subsection (2B) is met.

(2B) The condition is that the Court of Session has by act of sederunt made provision for a pre-action protocol for claims for damages arising from alleged clinical negligence.

(2C) For the purposes of this section—

“clinical negligence” means a breach, by act or omission, of duty of care by a health care professional in connection with a person’s diagnosis or the care and treatment of a person while the health care professional is acting in a professional capacity,

“a pre-action protocol” means a protocol requiring parties to a prospective claim for damages for personal injury arising from alleged clinical negligence to comply with certain compulsory procedures prior to commencing proceedings.>

### **Pursuer’s liability for court fees in personal injury claim**

#### **Daniel Johnson**

**11** After section 8, insert—

#### **<Fees in respect of cases to which section 8(1) applies**

(1) The Scottish Ministers must by regulations provide that a person bringing civil proceedings to which section 8(1) applies is not to be liable for fees payable in respect of such proceedings until the proceedings are concluded.

(2) Regulations under subsection (1) must include provision setting out when proceedings are concluded for the purposes of this section.>

#### **John Finnie**

**64** After section 8, insert—

#### **<Restriction on liability for court fees in personal injury claims**

Where section 8(2) applies, the person is not to be liable for fees payable in respect of the civil proceedings.>

#### **Daniel Johnson**

**16** In section 19, page 10, line 22, leave out <or 7(3)> and insert <, 7(3) and (*Fees in respect of cases to which section 8(1) applies*)(1)>



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### **Free representation**

#### **Annabelle Ewing**

37 In section 9, page 5, line 22, at end insert—

<( ) The party must disclose to the court the fact that some (or all) of the representation is provided free of charge.>

#### **Annabelle Ewing**

38 In section 9, page 5, line 24, at end insert—

<( ) In considering whether to make an order under subsection (2) 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.>

#### **Annabelle Ewing**

39 In section 9, page 5, line 29, at end insert—

<( ) Subsection (2) does not apply in relation to representation provided under section 28 of the Equality Act 2006 (legal assistance).>

### **Third party funding**

#### **Annabelle Ewing**

41 In section 10, page 6, line 4, leave out from <but> to <proceedings> in line 5

#### **Annabelle Ewing**

42 In section 10, page 6, line 7, at beginning insert <if known to the party,>

#### **Annabelle Ewing**

43 In section 10, page 6, leave out lines 9 to 12

#### **Annabelle Ewing**

44 In section 10, page 6, line 12, at end insert—

<(2A) 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.

(2B) Subsection (2A) does not apply where the assistance is provided under a success fee agreement (within the meaning of section 1).>

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### **John Finnie**

61 In section 10, page 6, line 12, at end insert—

<( ) Subsection (2A) does not apply where the assistance is provided by a trade union or similar body which represents the interests of workers.>

### **Annabelle Ewing**

45 In section 10, page 6, line 12, at end insert—

<( ) 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).>

### **Annabelle Ewing**

46 In section 10, page 6, line 13, after <section> insert <—

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

### **Daniel Johnson**

12 In section 10, page 6, line 13, after <include> insert <—

- ( ) support from a trade union,
- ( )>

### **Auditors of court**

#### **Annabelle Ewing**

51 In the schedule, page 12, line 12, at end insert—

<*Solicitors (Scotland) Act 1980*

In the Solicitors (Scotland) Act 1980, in section 51(3) (complaints to the Scottish Solicitors’ Discipline Tribunal), after paragraph (c) insert—

“(ca) the auditor of the Sheriff Appeal Court.”>

#### **Annabelle Ewing**

52 In the schedule, page 12, line 15, at end insert—

<*Legal Profession and Legal Aid (Scotland) Act 2007*

In the Legal Profession and Legal Aid (Scotland) Act 2007, in section 2(2)(b) (receipt of complaints by Scottish Legal Complaints Commission: preliminary steps), after subparagraph (v) insert—

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“(va) the auditor of the Sheriff Appeal Court,”.>

**Annabelle Ewing**

**50** After section 13, insert—

**<Temporary Auditor of the Court of Session**

- (1) Subsection (2) applies during any period when—
  - (a) the office of the Auditor of the Court of Session is vacant, or
  - (b) the holder of that office is for any reason unable to carry out the functions of the office.
- (2) The Lord President may appoint a person to act as the Auditor of the Court of Session during that period.
- (3) A person appointed under subsection (2)—
  - (a) is to be appointed on such terms and conditions as the Lord President determines,
  - (b) while acting as the Auditor of the Court of Session, is to be treated for all purposes, other than those of sections 13(4), (5) and (6) and 15(1) and (5), as the Auditor of the Court of Session.>

**Annabelle Ewing**

**53** In section 15, page 8, line 1, leave out <must> and insert <may>

**Annabelle Ewing**

**54** In section 15, page 8, line 2, at end insert—

- <( ) When preparing the guidance, the Auditor of the Court of Session must have regard to the desirability of auditors of court exercising their functions in a manner which is consistent and transparent.>

**Group proceedings: opt-out proceedings**

**Liam McArthur**

**13** In section 17, page 8, line 38, leave out subsection (3) and insert—

- <(3) The Court must specify the proceedings as opt-in group proceedings or opt-out group proceedings.
- (3A) “Opt-in group proceedings” are group proceedings which are brought on behalf of each group member who opts in by notifying the representative party, in a manner and by a time specified, that the claim should be included in the group proceedings.
- (3B) “Opt-out group proceedings” are group proceedings which are brought on behalf of each group member expect any group member who opts out by notifying the representative party, in a manner and by a time specified, that the claim should not be included in the group proceedings.>

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### **Liam McArthur**

- 14 In section 17, page 9, line 6, at end insert—  
<( ) The Court must designate a description of a group of persons whose claims are eligible for inclusion in the group proceedings.>

### **Liam McArthur**

- 15 In section 17, page 9, line 10, at end insert—  
<( ) only if it is satisfied that a group or the representative party has made all reasonable efforts to identify and notify all potential members of the group, and>

### **Post-legislative review**

#### **Annabelle Ewing**

- 55 After section 18, insert—

#### **<PART 4A**

#### **REVIEW OF OPERATION OF ACT**

##### **Review of operation of Act**

- (1) The Scottish Ministers must prepare a report, for each of Parts 1 to 4, on the operation of the provisions of the Part during the 5 year period.
- (2) The Scottish Ministers must—
  - (a) prepare each report as soon as practicable after the end of the 5 year period,
  - (b) consult such persons as they consider appropriate when preparing each report,
  - (c) lay each report before the Scottish Parliament as soon as practicable after it has been prepared,
  - (d) publish each report, in such manner as they consider appropriate, as soon as practicable after it has been so laid.
- (3) In this section, “the 5 year period” means—
  - (a) in relation to Part 1, 2 or 3, the period of 5 years beginning with the day on which the Part comes into force for all purposes,
  - (b) in relation to Part 4, the period of 5 years beginning with the day on which the first act of sederunt under section 18(1) comes into force.>

#### **Margaret Mitchell**

- 62 After section 18, insert—

#### **<PART**

#### **REVIEW OF OPERATION OF ACT**

##### **Review of operation of Act**

- (1) The Scottish Ministers must, as soon as practicable after the end of the 5 year period, review the operation of this Act and lay before the Scottish Parliament a report on that review.

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- (2) The report must, in particular, contain information about the effect of the operation of—
- (a) section 8,
  - (b) section 17,
- on access to justice and the administration of Scottish courts.
- (3) The report must include a statement by the Scottish Ministers setting out—
- (a) whether they intend to bring forward proposals to modify any provision of this Act, and
  - (b) where no such proposals are to be brought forward, their reasons for not doing so.
- (4) The Scottish Ministers must, as soon as practicable after the report has been laid before the Parliament, publish the report in such a manner as they consider appropriate.
- (5) In this section, “the 5 year period” means the period of 5 years beginning with the day of Royal Assent.>

**Annabelle Ewing**

**56** In section 22, page 11, line 2, at end insert—

- <( ) Part 4A comes into force at the end of the period of 2 months beginning with the day of Royal Assent.>



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