

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

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## Groupings of Amendments for Stage 3

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 3 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

**Note:** The time limit indicated is that set out in the timetabling motion to be considered by the Parliament before the Stage 3 proceedings begin. If that motion is agreed to, debate on the groups above the line must be concluded by the time indicated, although the amendments in those groups may still be moved formally and disposed of later in the proceedings.

**Group 1: Success fee agreements where damages obtained by agreement: enforceability**

34

**Group 2: Minor and technical amendments**

5, 6, 7, 8, 13, 14

**Group 3: Success fee agreements: damages for future loss**

1, 2, 2A, 3, 4

**Group 4: Power to modify section 7**

35

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**Debate to end no later than 1 hour and 5 minutes after proceedings begin**

**Group 5: Grounds on which pursuer may be liable for expenses in personal injury claim**

9, 9A, 10, 11, 12

*Notes on amendments in this group*

Amendment 9 pre-empts amendments 10 and 11

**Group 6: Pursuer's liability for court fees in personal injury claim**

36, 37, 38, 39

**Group 7: Auditors of Court**

15, 16, 33

**Debate to end no later than 1 hour and 55 minutes after proceedings begin**

**Group 8: Group proceedings**

17, 18, 19, 20, 21, 22, 23, 40

**Group 9: Review of operation of Act**

24, 25, 26, 27, 28, 29, 30, 31

**Debate to end no later than 2 hour and 30 minutes after proceedings begin**

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**Amendments in debating order**

**Group 1: Success fee agreements where damages obtained by agreement: enforceability**

**Margaret Mitchell**

**34** In section 2, page 2, line 20, at end insert—

- <( ) A success fee agreement, in the case where the damages are obtained by agreement, is enforceable only if—
- (a) before making the success fee agreement—
    - (i) the provider provides to the recipient in writing an explanation of how the terms of the success fee agreement would determine the fee payable in respect of the different elements of damages that may be obtained, and
    - (ii) the recipient confirms in writing that, having received the information mentioned in sub-paragraph (i), the recipient wishes to enter the agreement,
  - (b) after receiving an offer for damages, the provider provides to the recipient in writing—
    - (i) details of the damages obtained including, in particular, an explanation of any element representing damages for future loss,
    - (ii) an explanation of how the terms of the success fee agreement determine the amount of the fee payable in respect of the damages,
    - (iii) a certificate that the fee payable is fair and reasonable in the circumstances of the case, and
    - (iv) a certificate that no conflict of interest or undue influence has arisen in the circumstances of the case.>

**Group 2: Minor and technical amendments**

**Annabelle Ewing**

**5** In section 4, page 3, line 7, leave out <by>

**Annabelle Ewing**

**6** In section 4, page 3, line 8, at beginning insert <by>

**Annabelle Ewing**

**7** In section 4, page 3, line 9, at beginning insert <by, or in accordance with,>

**Annabelle Ewing**

**8** In section 4, page 3, line 11, after <by> insert <, or in accordance with,>

**Annabelle Ewing**

**13** In section 10, page 6, line 9, leave out from beginning to <provided> and insert—

<(b)>

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### Annabelle Ewing

- 14 In section 13A, page 8, line 3, after <President> insert <of the Court of Session>

### Group 3: Success fee agreements: damages for future loss

#### Daniel Johnson

- 1 In section 6, page 3, line 33, leave out <must not> and insert <—  
(a) may>

#### Daniel Johnson

- 2 In section 6, page 3, line 36, at end insert <if the future element is within subsection (5), but  
(b) otherwise, must provide that any future element will not be included in the relevant amount of damages.  
(5) The future element is within this subsection if it is to be paid in a lump sum and—  
5 (a) does not exceed £1,000,000, or  
(b) exceeds £1,000,000 and—  
(i) the provider had not advised the recipient to accept that the future element be paid in periodical instalments, and  
(ii) the condition in subsection (6) is met.  
10 (6) The condition is—  
(a) in the case where the damages are awarded by a court or tribunal, that the court or tribunal in awarding the future element has stated that it is satisfied that it is in the recipient's best interests that the future element be paid as a lump sum rather than in periodical instalments,  
15 (b) in the case where the damages are obtained by agreement, that an independent actuary has, after having consulted the recipient personally in the absence of the provider, certified that in the actuary's view it is in the recipient's best interests that the future element be paid as a lump sum rather than in periodical instalments.>

#### Margaret Mitchell

- 2A As an amendment to amendment 2, line 4, at end insert—  
<( ) where the future element exceeds £500,000, the success fee relating to the part of the amount that is above £500,000 does not exceed 1% of that part,>

#### Daniel Johnson

- 3\* In section 6, page 3, line 38, at end insert—  
<(8) The Scottish Ministers may by regulations substitute another sum for the sum for the time being specified in subsection (5)(a) and (b).>

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**Daniel Johnson**

- 4\* In section 6, page 3, line 40, at end insert—  
<( ) In subsection (6)(b), “actuary” means an Associate or Fellow of the Institute and Faculty of Actuaries.>

**Group 4: Power to modify section 7**

**Daniel Johnson**

- 35 In section 7, page 4, line 16, leave out subsection (4)

**Group 5: Grounds on which pursuer may be liable for expenses in personal injury claim**

**John Finnie**

- 9 In section 8, page 4, leave out lines 35 and 36 and insert—  
<( ) where the claim is found to be fraudulent or dishonest.>

**Daniel Johnson**

- 9A As an amendment to amendment 9, line 2, leave out <or dishonest>

**Annabelle Ewing**

- 10 In section 8, page 4, line 35, leave out <has acted> and insert <makes a fraudulent representation or otherwise acts>

**Annabelle Ewing**

- 11 In section 8, page 4, line 35, leave out from second <or> to end of line 36

**Annabelle Ewing**

- 12 In section 8, page 5, line 1, after <the> insert <claim or>

**Group 6: Pursuer’s liability for court fees in personal injury claim**

**John Finnie**

- 36 After section 8, insert—  
<**Fees in respect of certain cases to which section 8(1) applies**>  
(1) This section applies where a person brings civil proceedings where—  
(a) section 8(1) applies, and  
(b) financial assistance is provided by a trade union or similar body which represents the interests of workers.

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- (2) The Scottish Ministers must by regulations provide that a person to whom subsection (1) applies shall not be liable to pay fees until the proceedings are concluded.
- (3) Regulations under subsection (2) must include provision setting out when proceedings are concluded for the purpose of this section.>

### **Daniel Johnson**

37 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**

38 In section 19, page 12, line 4, after <7(3)> insert <, (*Fees in respect of certain cases to which section 8(1) applies*)(2)>

### **Annabelle Ewing**

39 In section 19, page 12, line 4, leave out <and (*Fees in respect of cases to which section 8(1) applies*)(1)>

## **Group 7: Auditors of Court**

### **Annabelle Ewing**

15 After section 14, insert—

#### **<Auditors unable to tax account**

- (1) Where an account of expenses remitted by a court or tribunal for taxation cannot be taxed by an auditor of court—
  - (a) the account must be returned to the court or tribunal, and
  - (b) the court or tribunal must remit the account to a person who is not an auditor of court for taxation.
- (2) Where an account is remitted to a person under subsection (1)(b)—
  - (a) the person is to be treated in relation to the taxation of the account as if the person were an auditor of court (but is not to be treated as an auditor for the purposes of section 13),
  - (b) the person is entitled to payment of such sums as the Scottish Courts and Tribunals Service may determine by way of—
    - (i) remuneration in respect of the taxation,
    - (ii) reimbursement of expenses reasonably incurred by the person in connection with the taxation.>

**THIS IS NOT THE MARSHALLED LIST**

**Annabelle Ewing**

16 In section 16, page 9, line 6, at end insert—

<( ) any person to whom an account is remitted under section (*Auditors unable to tax account*)(1)(b), but only where the information relates to such an account.>

**Annabelle Ewing**

33 In the schedule, page 13, line 5, at end insert—

<*Courts of Law Fees (Scotland) Act 1895*

- (1) The Courts of Law Fees (Scotland) Act 1895 is amended in accordance with this paragraph.
- (2) In section 3 (taxation of accounts in High Court of Justiciary)—
  - (a) the existing text becomes subsection (1),
  - (b) in that subsection—
    - (i) for “High Court of Justiciary”, in both places where it occurs, substitute “relevant court”,
    - (ii) for “said High Court” substitute “relevant court”,
    - (iii) for “auditor of the Court of Session” substitute “relevant auditor of court”,
    - (iv) for “regulations” substitute “rules of court”,
    - (v) for “actions in the Court of Session” substitute “relevant civil proceedings”,
  - (c) after that subsection insert—

“(2) In subsection (1)—

“relevant court” means—

    - (a) the High Court of Justiciary, or
    - (b) the Sheriff Appeal Court, when exercising its jurisdiction in criminal proceedings,

“relevant auditor of court” means—

    - (a) where the relevant court is the High Court of Justiciary, the Auditor of the Court of Session,
    - (b) where the relevant court is the Sheriff Appeal Court, the auditor of the Sheriff Appeal Court,

“relevant civil proceedings” means—

    - (a) where the relevant court is the High Court of Justiciary, proceedings in the Court of Session,
    - (b) where the relevant court is the Sheriff Appeal Court, civil proceedings in that Court.”.
  - (3) The title of section 3 becomes “**Taxation of accounts in criminal proceedings**”.>

**THIS IS NOT THE MARSHALLED LIST**

**Group 8: Group proceedings**

**Annabelle Ewing**

17 In section 17, page 9, line 27, leave out subsections (3) to (3B)

**Annabelle Ewing**

18 In section 17, page 10, line 3, leave out subsection (6A)

**Annabelle Ewing**

19 In section 17, page 10, line 8, leave out <a group or>

**Annabelle Ewing**

20 In section 17, page 10, line 9, after <group> insert <about the proceedings>

**Annabelle Ewing**

21 In section 17, page 10, line 10, at end insert—

<(7A) An act of sederunt under section 18(1) may provide for group proceedings to be brought as—

- (a) opt-in proceedings,
- (b) opt-out proceedings, or
- (c) either opt-in proceedings or opt-out proceedings.

(7B) In subsection (7A)—

- (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.>

**Annabelle Ewing**

22 In section 18, page 10, line 24, at end insert—

<( ) 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,>

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### Annabelle Ewing

23 After section 18, insert—

#### <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 17(7B)(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.>

### Annabelle Ewing

40 In section 19, page 12, line 5, after <(Fees in respect of cases to which section 8(1) applies)(1)> insert <or (Group proceedings: further provision)(1)>

## Group 9: Review of operation of Act

### Annabelle Ewing

24 In section 18A, page 11, line 18, leave out <this Act> and insert<—

- ( ) Parts 1 to 3,
- ( ) Part 4,>

### Annabelle Ewing

25 In section 18A, page 11, line 20, after <report> insert <on the review of Parts 1 to 3>

### Annabelle Ewing

26 In section 18A, page 11, leave out line 22

### Annabelle Ewing

27 In section 18A, page 11, line 23, at end insert—

- <( ) The report on the review of Part 4 must, in particular, contain information about the effect of the operation of section 17 on access to justice and the administration of Scottish courts.>

### Annabelle Ewing

28 In section 18A, page 11, line 24, leave out first <The> and insert <Each>

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**Annabelle Ewing**

- 29** In section 18A, page 11, line 28, leave out second <the> and insert <a>

**Annabelle Ewing**

- 30** In section 18A, page 11, line 30, after <with> insert—  
<( ) in the case of the review of Parts 1 to 3,>

**Annabelle Ewing**

- 31** In section 18A, page 11, line 31, at end insert—  
<( ) in the case of the review of Part 4, the day on which the first act of sederunt under section 18(1) comes into force.>

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