

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

[As Amended at Stage 2]

Supplementary Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were introduced, amended or removed from the Bill at Stage 2. The memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

2. The contents of this memorandum do not form part of the Bill, are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Delegated Powers

Section 5(1) – Success fee agreements - exclusion for certain matters

Power conferred on:	The Scottish Ministers
Power exercisable by:	Regulations made by Scottish Statutory Instrument
Parliamentary procedure:	Affirmative
Change at Stage 2:	Addition of subsection (1A)

This document relates to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (SP Bill 14A) as amended at Stage 2

Provision

3. New subsection (1A) allows regulations under section 5(1) of the Bill to relate to all success fee agreements or to success fee agreements of a description specified by the Scottish Ministers in the regulations.

Reason for taking power

4. Success fee agreements may be damages based or speculative. Stage 1 evidence from the Faculty of Advocates highlighted that in family proceedings there are some instances where speculative fee agreements have been used, whereas all stakeholders agree with Sheriff Principal Taylor that damages based agreements should not be permitted to be used in family proceedings. There are also different types of speculative fee agreements in existence. New subsection (1A) allows regulations under section 5(1) of the Bill to make differential provision for different types of success fee agreements.

Choice of procedure

5. The Scottish Government remains of the view that affirmative procedure is appropriate.

Section 6(8) – Success fee agreements and personal injury claims

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative
Change at Stage 2: Delegated power removed

Section 7(3) – Form, content etc of success fee agreements

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Scottish Statutory Instrument
Parliamentary procedure: Affirmative
Changes at Stage 2: New paragraph in illustrative list
Power to modify Part 1 of Act restricted

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Provision

6. Section 7(3) includes an illustrative list of matters that may be provided for in regulations. New paragraph (f) adds to that list provision about how Part 1 of the Bill and any provision made under it (including caps set under section 4) apply if the client receives services from more than one provider of relevant services (most commonly a solicitor and a claims management company) in relation to the same matter. Such provision would prevent a pursuer from being liable to pay two or more success fees and thus not benefit from the success fee caps set under section 4. By referring to more than one provider rather than more than one agreement, the Scottish Government intends new paragraph (f) to deal with cases, firstly, where there is more than one party to an agreement and, secondly, cases where there are multiple agreements.

7. Section 7(4) now provides that regulations under subsection (3) may only modify Part 1 of the Act to the extent of modifying section 7 so as to add text to it or modify text so added. In other words, none of the text that the Parliament agrees for Part 1 of the Bill at Stage 3 can be removed by section 7(3) regulations.

Reason for taking power

8. Some members of the Justice Committee queried at Stage 1 whether two or more success fees might be taken from a single pursuer, so that the caps on success fees set out by Scottish Ministers in regulations made under section 4 would be circumvented. Pursuer representatives told the Justice Committee that this does not happen and would not happen in the future. Nonetheless the Scottish Government takes the view that Ministers should have delegated power to ensure that this cannot happen.

9. The Delegated Powers and Law Reform Committee's report on Stage 1 of the Bill invited the Scottish Government to restrict section 7(4) of the Bill. The Scottish Government confirmed in its Stage 1 response it would bring forward an amendment which was agreed to at Stage 2.

Choice of procedure

10. The Scottish Government remains of the view that affirmative procedure is appropriate.

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