

2018 No. 368 (C. 23)

COURT OF SESSION

SHERIFF APPEAL COURT

SHERIFF COURT

SCOTTISH COURTS AND TRIBUNALS SERVICE

The Civil Litigation (Expenses and Group Proceedings)
(Scotland) Act 2018 (Commencement No. 1, Transitional and
Saving Provisions) Regulations 2018

Made - - - - *4th December 2018*

Laid before the Scottish Parliament *5th December 2018*

Coming into force - - *30th January 2019*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 27(3) and (4) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2018 and come into force on 30 January 2019.

(2) In these Regulations—

“the 1933 Act” means the Administration of Justice (Scotland) Act 1933(b), and

“the 2018 Act” means the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018.

Appointed day

2. 30 January 2019 is the day appointed for the coming into force of the following provisions of the 2018 Act—

(a) section 4(1) and (2) (power to cap success fees),

(a) 2018 asp 10.

(b) 1933 c.41.

- (b) section 5 (power to exclude specified descriptions of civil proceedings from success fee agreements),
- (c) section 6(8) (power to vary sums specified in section 6(5)(a) and (b)),
- (d) section 7(3) and (4) (power to make further provision about success fee agreements),
- (e) section 12(1), (3) and (4) (minor and consequential modifications of the Courts Reform (Scotland) Act 2014^(a)),
- (f) section 14 (auditors of court),
- (g) section 15 (temporary auditor of the Court of Session),
- (h) section 16 (auditors' functions),
- (i) section 17 (auditors unable to tax account),
- (j) section 18 (guidance),
- (k) section 19 (reports),
- (l) section 20(7) and (8) (group proceedings),
- (m) section 21 (group procedure: rules),
- (n) section 22 (group proceedings: further provision), and
- (o) the schedule (auditors of court: modification of enactments).

Saving and Transitional Provisions – Auditor of the Court of Session appointed before 30 January 2019

3.—(1) Despite the repeal of the provisions mentioned in paragraph (2), those provisions continue to apply to a holder of the office of Auditor of the Court of Session appointed before 30 January 2019.

(2) The provisions are—

- (a) section 32 of the Court of Session Act 1821^(b) (office of Auditor of the Court of Session to be made permanent), repealed by paragraph 1 of the schedule of the 2018 Act,
- (b) section 25(2) of the 1933 Act^(c) (appointment of Principal Clerk of Justiciary etc.), repealed by paragraph 3(a) of the schedule of the 2018 Act,
- (c) section 26 of the 1933 Act^(d) (age limit for officers of High Court of Justiciary and Court of Session), repealed by paragraph 3(b) of the schedule of the 2018 Act,
- (d) section 27(1) of the 1933 Act^(e) (remuneration of officers of High Court of Justiciary and Court of Session), repealed by paragraph 3(c) of the schedule of the 2018 Act, and
- (e) section 28 of the 1933 Act^(f) (regulations for admission of officers of High Court of Justiciary and Court of Session), repealed by paragraph 3(d) of the schedule of the 2018 Act.

(3) Accordingly, the following provisions of the 2018 Act do not apply to a holder of the office of Auditor of the Court of Session appointed before 30 January 2019—

- (a) section 14(5), and
- (b) section 15.

(a) 2014 asp 18.

(b) 1821 c.38.

(c) Section 25 was substituted by the Judiciary and Courts (Scotland) Act 2008 (asp 6), schedule 4, paragraph 1(4).

(d) Section 26 was amended by S.I. 1999/1820, schedule 2, Part I, paragraph 15(5).

(e) Section 27 was amended by S.I. 1999/1820, schedule 2, Part I, paragraph 15(6).

(f) Section 28 was amended by S.I. 1999/1820, schedule 2, Part I, paragraph 15(7).

Transitional provision – auditor of the Sheriff Appeal Court appointed before 30 January 2019

4. Section 14(5) of the 2018 Act does not apply to a holder of the office of auditor of the Sheriff Appeal Court appointed before 30 January 2019.

Transitional provision – auditors of the sheriff court appointed before 30 January 2019

5. If a holder of the office of auditor of the sheriff court is not a member of staff of the Scottish Courts and Tribunals Service on 30 January 2019—

- (a) that person may be appointed to hold that office under section 14(3), and
- (b) section 14(5) of the 2018 Act does not apply to that person unless they are appointed by virtue of sub-paragraph (a).

Transitional provision – reports

6.—(1) A report under section 19 of the 2018 Act need not include information in relation to an auditor of court appointed before 30 January 2019.

(2) Paragraph (1) does not apply where a holder of the office of auditor of the sheriff court becomes appointed as an auditor of the sheriff court under section 14(3) of the 2018 Act.

St Andrew's House,
Edinburgh
4th December 2018

ASH DENHAM
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations brings into force certain provisions of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the 2018 Act”) on 30 January 2019.

Sections 4(1) and (2), 5, 6(8), 7(3) and (4) and 22 are commenced on 30 January 2019 as regards regulation making powers of the Scottish Ministers.

Section 12(1), (3) and (4) is commenced on the same date as regards rule making powers of the Court of Session.

Sections 14 to 19 and the schedule are commenced on the same date as regards auditors of court.

Sections 20(7) and (8) and 21 are commenced on the same date as regards power to make group procedure rules.

Regulation 3(1) is a saving and transitional provision to continue the governing legislation applicable to the incumbent Auditor of the Court of Session, which is listed in regulation 3(2). Regulation 3(3) disapplies from that office-holder those provisions of the 2018 Act that would be inconsistent with the saved legislation.

Regulations 4 and 5 make similar transitional provision for the auditor of the Sheriff Appeal Court and the auditors of the sheriff court. In the case of regulation 5 and sheriff court auditors, special provision is made to reflect that some of them are employed or may become employed by the Scottish Courts and Tribunals Service, in which case Part 3 of the 2018 Act (auditors of court) should apply fully to them.

Regulation 6 is a transitional provision concerning annual reports about taxations under section 19 of the 2018 Act, reflecting that the Scottish Courts and Tribunals Service will not be in possession of the details of numbers of taxations or fees charged as regards self-employed auditors.

The Bill for the 2018 Act received Royal Assent on 5 June 2018. Sections 24 to 28 came into force on the following day and section 23 came into force on 5 August 2018.

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