

2020 No. 208

COURT OF SESSION

**Act of Sederunt (Rules of the Court of Session 1994
Amendment) (Group Proceedings) 2020**

<i>Made</i>	- - - -	<i>8th July 2020</i>
<i>Laid before the Scottish Parliament</i>		<i>9th July 2020</i>
<i>Coming into force</i>	- -	<i>31st July 2020</i>

In accordance with section 4 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013(a), the Court of Session has approved draft rules submitted to it by the Scottish Civil Justice Council.

The Court of Session therefore makes this Act of Sederunt under the powers conferred by section 103(1) of the Courts Reform (Scotland) Act 2014(b), section 21(1) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018(c) and all other powers enabling it to do so.

Citation and commencement, etc.

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Group Proceedings) 2020.

(2) It comes into force on 31st July 2020.

(3) A certified copy is to be inserted in the Books of Sederunt.

Amendment of the Rules of the Court of Session 1994

2.—(1) The Rules of the Court of Session 1994(d) are amended in accordance with this paragraph.

(2) In rule 4.2(3) (signature of documents)(e), after sub-paragraph (b) insert—

“(bza)an application in Form 26A.5 or Form 26A.8 may be signed by the applicant or an agent;”.

(3) In rule 5.1 (orders against which caveats may be lodged)(f)—

(a) in sub-paragraph (d), after “in which he has an interest;” omit “and”;

(a) 2013 asp 3. Section 4 was amended by the Courts Reform (Scotland) Act 2014 (asp 18), schedule 5, paragraph 31(3) and by the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (asp 2), schedule 1, paragraph 1(4).

(b) 2014 asp 18.

(c) 2018 asp 10.

(d) The Rules of the Court of Session 1994 are in schedule 2 of the Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443), last amended by S.S.I. 2020/198.

(e) Rule 4.2(3) was last amended by S.S.I. 2019/293.

(f) Rule 5.1 was amended by S.S.I. 2001/92.

- (b) in sub-paragraph (e), after “a petition for his sequestration” insert “; and”; and
- (c) after sub-paragraph (e) insert—
 - “(f) an order permitting the bringing of group proceedings (within the meaning given in Chapter 26A)”.
- (4) In rule 13.2 (form of summonses)(a), after paragraph (1) insert—
 - “(1A) A summons in an action to which Chapter 26A (group procedure) applies is to be in Form 13.2-AA.”.
- (5) After Chapter 26 (third party procedure)(b), insert—

“CHAPTER 26A
GROUP PROCEDURE
 PART 1
 GENERAL PROVISIONS

Interpretation and application of this Chapter

26A.1.—(1) In this Chapter—

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

“group” has the meaning provided in section 20(2) of the Act;

“group member” means a person who, along with one or more other persons, expressly consents to the group proceedings to be brought on his or her behalf;

“group proceedings” has the meaning provided in section 20(1) of the Act;

“group register” is a record, in Form 26A.15, of those persons who are group members;

“representative party” has the meaning provided in section 20(2) of the Act.

(2) In rules 26A.6, 26A.7, 26A.9, 26A.11 and 26A.15 “applicant” has the meaning given in rule 26A.5(1).

(3) This Chapter applies to group proceedings as provided for by Part 4 of the Act.

Disapplication of certain rules

26A.2.—(1) The requirement in rule 4.1(4) (form, size, etc., of documents forming the process) for a step in process to be folded lengthwise does not apply in proceedings to which this Chapter applies.

(2) An open record is not to be made up in, and Chapter 22 (making up and closing records)(d) does not apply to, proceedings to which this Chapter applies unless otherwise ordered by the Lord Ordinary.

(3) The following rules do not apply to proceedings to which this Chapter applies—

- (a) rule 6.2 (fixing and allocation of diets in Outer House)(e);

- (b) rule 36.3 (lodging productions).

(a) Rule 13.2 was last amended by S.S.I. 2008/349.
 (b) Chapter 26 was last amended by S.S.I. 2009/104.
 (c) 2018 asp 10.
 (d) Chapter 22 was last amended by S.S.I. 2007/7.
 (e) Rule 6.2 was last amended by S.S.I. 2007/548.

Procedure in group proceedings

26A.3.—(1) Subject to the other provisions of this Chapter, the procedure in proceedings to which this Chapter applies is to be such as the Lord Ordinary is to order or direct.

(2) All proceedings in the Outer House to which this Chapter applies are to be heard or determined on such dates and at such times as are fixed by the Lord Ordinary.

(3) The fixing of a hearing for a specified date and time in proceedings to which this Chapter applies does not affect the right of any party to apply by motion at any time under these rules.

Motions under this Chapter

26A.4.—(1) Chapter 23 (motions)(a) applies to motions under this Chapter.

(2) Motions under this Chapter may be intimated and enrolled in accordance with Part 2 of Chapter 23.

PART 2 REPRESENTATIVE PARTY

Application to be a representative party

26A.5.—(1) An application by a person (the “applicant”) under section 20(3)(b) of the Act to be a representative party to bring group proceedings is to be made by motion, in Form 26A.5.

(2) On a motion being enrolled under paragraph (1), the application is to be brought before a Lord Ordinary on the first available day after being made, for an order for—

- (a) intimation and service of the application on the defender and such other person as the Lord Ordinary thinks fit within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (b) such advertisement as the Lord Ordinary thinks fit to take place within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (c) any person on whom the application has been served, to lodge answers and any relevant documents, if so advised, within 21 days after the date of service, or within such other period as the Lord Ordinary thinks fit.

(3) A person served with the application who intends to participate in the decision as to whether authorisation should be given must lodge answers within the period ordered for the lodging of answers.

(4) Where answers are lodged under paragraph (2)(c) a hearing must be fixed.

(5) The applicant and any person who has lodged answers must be given at least 7 days’ notice of a hearing ordered under paragraph (4).

(6) Where application for permission to bring proceedings is being made under rule 26A.9(1) at the same time as an application is made under paragraph (1) then paragraphs (7) and (8) apply.

(7) The applicant must, at the same time as making the applications under this rule and rule 26A.9(1), lodge in the General Department—

- (a) the summons by which it is proposed to institute proceedings;
- (b) a group register in Form 26A.15; and
- (c) all relevant documents in the applicant’s possession which are necessary for the court to determine whether or not to give permission.

(a) Chapter 23 was last amended by S.S.I. 2017/414.

(8) The applicant must, at the same time as lodging papers in the General Department under paragraph (7), serve those papers on the defender.

(9) Evidence of service in accordance with Chapter 16 must be provided to the General Department within 14 days from the date of service.

Application by more than one person to be a representative party

26A.6.—(1) This rule applies where—

- (a) more than one application made under rule 26A.5(1) is received by the court from more than one applicant in connection with the same issues (whether of fact or law) which may be subject to group proceedings; and
- (b) the Lord Ordinary has not determined the first received application at the point a subsequent application is received.

(2) A hearing on the applications must be fixed by the court.

(3) The applicants must be given at least 7 days' notice of a hearing fixed under paragraph (2).

Determination of an application by a person to be a representative party

26A.7.—(1) An applicant may be authorised under section 20(3)(b) of the Act to be a representative party in group proceedings only where the applicant has satisfied the Lord Ordinary that the applicant is a suitable person who can act in that capacity should such authorisation be given.

(2) The matters which are to be considered by the Lord Ordinary when deciding whether or not an applicant is a suitable person under paragraph (1) include—

- (a) the special abilities and relevant expertise of the applicant;
- (b) the applicant's own interest in the proceedings;
- (c) whether there would be any potential benefit to the applicant, financial or otherwise, should the application be authorised;
- (d) confirmation that the applicant is independent from the defender;
- (e) demonstration that the applicant would act fairly and adequately in the interests of the group members as a whole, and that the applicant's own interests do not conflict with those of the group whom the applicant seeks to represent; and
- (f) the demonstration of sufficient competence by the applicant to litigate the claims properly, including financial resources to meet any expenses awards (the details of funding arrangements do not require to be disclosed).

(3) The Lord Ordinary may refuse an application made by an applicant seeking authorisation to be given under section 20(3)(b) of the Act where the applicant has not satisfied the Lord Ordinary that the applicant is a suitable person, in terms of paragraphs (1) and (2), to act in that capacity.

(4) Authorisation given under paragraph (1) endures until the group proceedings finish or until permission is withdrawn.

Replacement of a representative party

26A.8.—(1) A representative party may apply to the court, by motion in Form 26A.8, seeking the permission of the court to authorise, in place of that party, another person as the representative party, who may or may not be a group member.

(2) A group member may apply to the court, by motion in Form 26A.8, seeking the permission to authorise the replacement of the representative party with another person, who may or may not be a group member.

(3) On a motion being enrolled in terms of paragraph (1) or (2), the application is to be brought before a Lord Ordinary on the first available day after being made, for an order for—

- (a) intimation and service of the application on—
 - (i) the defender;
 - (ii) in the case of an application made under paragraph (2), the representative party;
 - (iii) the group members; and
 - (iv) such other person as the Lord Ordinary thinks fit, in a manner which the Lord Ordinary thinks most appropriate in the circumstances, within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (b) such advertisement as the Lord Ordinary thinks fit to take place within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (c) any person on whom the application has been served, to lodge answers and any relevant documents, if so advised, within 21 days after the date of service, or within such other period as the Lord Ordinary thinks fit.

(4) A person served with an application under this rule who intends to participate in the decision as to whether permission should be given must lodge answers within the period ordered for the lodging of answers.

(5) Subject to paragraphs (6) and (7), the Lord Ordinary may—

- (a) where satisfied it is appropriate to do so, decide to proceed without holding a hearing;
- (b) fix a date for the hearing of the application;
- (c) require further information from the representative party, the proposed replacement representative party or the group members before making any further order.

(6) Where—

- (a) in the case of an application made under paragraph (2), the representative party;
- (b) in the case of an application made under paragraph (1) or (2), a group member,

has lodged answers in opposition to the application then paragraph (7) applies.

(7) A hearing on the application and the answers lodged thereto must be fixed by the court.

(8) Where a hearing on the application is fixed by the court, it must give—

- (a) the applicant;
- (b) the defender;
- (c) the representative party;
- (d) the person who is to replace the representative party; and
- (e) the group members,

an opportunity to be heard before considering whether to grant the application or not.

(9) Subject to paragraph (10), the Lord Ordinary may grant an application made under paragraph (2) only where it appears to the Lord Ordinary that the representative party is not able to represent the interests of the group members adequately.

(10) No application made under paragraph (1) or (2) may be granted unless the Lord Ordinary is satisfied that—

- (a) the person who is to replace the representative party is a suitable person who can act in that capacity should such authorisation be given, having regard to the matters mentioned in rule 26A.7(2); and
- (b) the best interests of the group members are met.

(11) Where the Lord Ordinary makes an order authorising a person to be a representative party under section 20(3)(b) of the Act in place of a person who had previously been so authorised, the newly authorised representative party must, as soon as practicable and no later than 14 days after the date on which the order is made, inform all other parties and the group members of the order.

(12) The Lord Ordinary may, when making an order under this rule, make any such order as the Lord Ordinary thinks fit.

PART 3

PERMISSION TO BRING GROUP PROCEEDINGS

Application for permission

26A.9.—(1) An application for permission to bring group proceedings under section 20(5) of the Act is to be made by the representative party or, as the case may be, the applicant by motion, in Form 26A.9.

(2) On a motion being enrolled in terms of paragraph (1), the application is to be brought before a Lord Ordinary on the first available day after being made, for an order for—

- (a) intimation and service of the application on the defender and such other person as the Lord Ordinary thinks fit within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (b) such advertisement as the Lord Ordinary thinks fit to take place within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (c) any person on whom the application has been served, to lodge answers and any relevant documents, if so advised, within 21 days after the date of service, or within such other period as the Lord Ordinary thinks fit.

(3) The representative party or, as the case may be, the applicant must lodge in the General Department—

- (a) the summons by which it is proposed to institute proceedings;
- (b) a group register in Form 26A.15; and
- (c) all relevant documents in their possession which are necessary for the court to determine whether or not to give permission,

at the same time as making an application for permission under paragraph (1).

(4) The representative party or, as the case may be, the applicant must, at the same time as lodging papers in the General Department under paragraph (3), serve those papers on the defender.

(5) Evidence of service in accordance with Chapter 16 must be provided to the General Department within 14 days from the date of service.

(6) A person served with the application who intends to participate in the decision as to whether permission should be given must lodge answers within the period ordered for the lodging of answers.

Application for permission: further provision

26A.10.—(1) If a party seeks any of the orders mentioned in paragraph (3), that party must apply by motion.

(2) The Lord Ordinary must have regard to the need for the fair and efficient determination of the action when making any such order.

(3) The orders are—

- (a) dispensing with intimation, service or advertisement;
- (b) adjusting the period for intimation, service or advertisement;
- (c) adjusting the period for the lodging of answers and any relevant documents;

- (d) an interim order; or
- (e) a sist, on cause shown.

(4) A sist must be for no longer than 28 days, but can be renewed.

(5) The representative party must, within 7 days of the date of the interlocutor, notify the Scottish Legal Aid Board of a sist for legal aid.

The permission stage

26A.11.—(1) Within 14 days of the expiry of the period within which answers may be lodged the Lord Ordinary may—

- (a) if satisfied that it is appropriate to do so, make an order giving permission for group proceedings to be brought under section 20(5) of the Act without holding a hearing;
- (b) require further information from any of the parties before making any further order; or
- (c) fix a date and time for a hearing of the application for permission and of any answers thereto.

(2) The Keeper of the Rolls must notify—

- (a) the representative party or, as the case may be, the applicant; and
- (b) any person who has lodged answers,

of the date and time of any hearing fixed under paragraph (1)(c).

(3) The parties must be given at least 7 days' notice of a hearing fixed under paragraph (1)(c).

(4) At a hearing fixed under paragraph (1)(c), the Lord Ordinary may—

- (a) grant the application (including the giving of permission subject to conditions or only on particular grounds); or
- (b) refuse the application.

(5) The circumstances in which permission to bring proceedings to which this Chapter applies may be refused by the Lord Ordinary are as follows—

- (a) the criteria set out in section 20(6)(a) or (b) (or both (a) and (b)) of the Act have not been met;
- (b) it has not been demonstrated that there is a prima facie case;
- (c) it has not been demonstrated that it is a more efficient administration of justice for the claims to be brought as group proceedings rather than by separate individual proceedings;
- (d) it has not been demonstrated that the proposed proceedings have any real prospects of success.

(6) Where permission is refused (or permission is granted subject to conditions or only on particular grounds), the Lord Ordinary must give reasons for the decision.

Grant of permission

26A.12.—(1) Where the Lord Ordinary gives permission for group proceedings to be brought the Lord Ordinary is to make an order which—

- (a) states the name and designation of the representative party;
- (b) defines the group and the issues (whether of fact or law) which are the same as, or similar or related to, each other raised by the claims;
- (c) requires the lodging, by the representative party, of a group register;

- (d) specifies the procedure which must be followed for a person to be a group member;
- (e) specifies the period of time in which claims may be brought by persons in the group proceedings;
- (f) specifies that group members may withdraw their consent to being bound by the group proceedings;
- (g) specifies the procedure which must be followed by a group member to withdraw their claim from the group proceedings; and
- (h) requires such advertisement of the permission to bring group proceedings to take place—
 - (i) within 7 days of the date of the order; and
 - (ii) thereafter, within the period during which persons may opt-in to the proceedings,
 as the Lord Ordinary thinks fit.

(2) The Lord Ordinary may, when making an order under this rule, make any such order as the Lord Ordinary thinks fit.

The permission stage: appeals

26A.13. An appeal against the granting or refusing of permission (including the granting of permission either subject to conditions or only on particular grounds) for group proceedings to be brought is made by reclaiming motion.

PART 4 OPT-IN PROCEDURE

Opt-in proceedings – notices

26A.14.—(1) A person gives consent for their claim to be brought in group proceedings by sending notice to that effect to the representative party in Form 26A.14-A.

(2) A group member withdraws their consent for their claim to be brought in group proceedings by sending notice to that effect to the representative party in Form 26A.14-B.

(3) A notice under paragraph (1) or (2) may be sent either—

- (a) by first class post; or
- (b) where paragraph (4) applies, by email.

(4) This paragraph applies where the representative party has confirmed consent to—

- (a) a prospective group member;
- (b) a group member,

to receiving a notice under paragraph (1) or (2) by electronic means, and has provided an email address to such persons for that purpose.

(5) In this rule a “representative party” includes a person who has made or, as the case may be, is to make an application seeking the authorisation of the court under section 20(3)(b) of the Act to be a representative party in group proceedings.

Opt-in proceedings – group register

26A.15.—(1) A group register is to be in Form 26A.15.

(2) Subject to paragraph (4), paragraph (3) applies where, following the lodging in the General Department and the service upon the defender of a group register under rule 26A.5(7)(b) and (8) or, as the case may be, rule 26A.9(3)(b) and (4), the membership of the group of persons on whose behalf proceedings are to be, or have been, brought changes following either, or both—

- (a) the addition into the group of a new group member;
- (b) the withdrawal from the group of a group member.

(3) The representative party or, as the case may be, the applicant must—

- (a) lodge in the General Department; and
- (b) at the same time, serve on the defender,

a revised group register, in Form 26A.15, as soon as possible and no later than 21 days following the representative party's or, as the case may be, the applicant's receipt of any notice made under rule 26A.14.

(4) Where the Lord Ordinary grants an application made under rule 26A.16(1) or 26A.17(1) the representative party must—

- (a) lodge in the General Department; and
- (b) at the same time, serve on the defender,

a revised group register, in Form 26A.15, as soon as possible and no later than 21 days following the grant of the application by the Lord Ordinary.

(5) The representative party or, as the case may be, the applicant must, at the same time as lodging in the General Department and serving on the defender a revised group register, inform all group members of the changes to the membership of the group of persons.

(6) The lodging of a group register in the General Department and the service on a defender under rule 26A.5(8), 26A.9(4) or paragraph (3) or (4) of this rule, may be by first class post or by electronic means.

(7) The group register is to be considered by the court at all hearings of the proceedings.

(8) Evidence of service in accordance with Chapter 16 must be provided to the General Department within 14 days from the date of service.

Opt-in proceedings – late application

26A.16.—(1) This rule applies where, following the allowance of proof, a person sends notice under rule 26A.14(1) in Form 26A.14-A, to the representative party seeking their claim to be brought in the group proceedings.

(2) Application is to be made by the representative party by motion in Form 26A.16.

(3) On a motion being enrolled under paragraph (2), the application is to be brought before the Lord Ordinary on the first available day after being made, for an order for—

- (a) intimation and service of the application on the defender and such other person as the Lord Ordinary thinks fit within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (b) such advertisement as the Lord Ordinary thinks fit to take place within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (c) any person on whom the application has been served, to lodge answers and any relevant documents, if so advised, within 14 days after the date of service, or within such other period as the Lord Ordinary thinks fit.

(3) A person served with an application made under paragraph (2) who intends to participate in the decision as to whether the application should be granted must lodge answers within the period ordered for the lodging of answers.

(4) A motion enrolled under paragraph (2) is to be granted only—

- (a) after giving the defender the opportunity to be heard;
- (b) on cause shown; and
- (c) on such conditions, if any, as to the expenses or otherwise as the Lord Ordinary thinks fit.

Opt-in proceedings – late withdrawal of consent for a claim to be brought in the proceedings or where, following withdrawal, there would be less than two pursuers

26A.17.—(1) This rule applies where a group member sends notice under rule 26A.14(2), in Form 26A.14-B, to the representative party either (or both)—

- (a) after the commencement of any proof;
- (b) where there would, should that person’s claim not be brought in the proceedings, be less than two persons having a claim in the proceedings.

(2) Application is to be made by the representative party by motion in Form 26A.17.

(3) On a motion being enrolled in terms of paragraph (2), the application is to be brought before the Lord Ordinary on the first available day after being made, for an order for—

- (a) intimation and service of the application on the defender and such other person as the Lord Ordinary thinks fit within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (b) such advertisement as the Lord Ordinary thinks fit to take place within 7 days of the date of the order, or within such other period as the Lord Ordinary thinks fit;
- (c) any person on whom the application has been served, to lodge answers and any relevant documents, if so advised, within 14 days after the date of service, or within such other period as the Lord Ordinary thinks fit.

(4) A motion enrolled under paragraph (2) is to be granted only—

- (a) after giving the defender an opportunity to be heard; and
- (b) on such conditions, if any, as to expenses or otherwise as the Lord Ordinary thinks fit.

PART 5

COMMENCEMENT OF GROUP PROCEEDINGS

Commencement of group proceedings

26A.18.—(1) The service upon a defender of a group register under either rule 26A.5(8) or rule 26A.9(4) amounts to the commencement of the proceedings in respect of those persons who are group members, and are recorded as such on the group register that is served.

(2) The lodging with the court of a group register, in revised form, under rule 26A.15(3)(a) amounts to the commencement of the proceedings in respect of any new group member who has, following the lodging and service of the group register under either rule 26A.5(7)(b) and (8) or rule 26A.9(3)(b) or (4), joined the group.

(3) Paragraph (4) applies where, following an application being made by the representative party under rule 26A.16(1), the Lord Ordinary grants the application allowing a claim for a person to which rule 26A.16(1) applies to be brought in the proceedings.

(4) The enrolment of a motion under rule 26A.16(2) in connection with an application made under rule 26A.16(1) amounts to the commencement of the proceedings in respect of a person to which rule 26A.16(1) applies.

PART 6

SUMMONSES AND DEFENCES

Summons in group proceedings actions

26A.19.—(1) A summons in proceedings to which this Chapter applies is made in Form 13.2-AA.

(2) A summons in proceedings to which this Chapter applies is to—

- (a) specify, in the form of conclusions, the orders sought;

- (b) identify the parties to the proceedings and the matters from which the proceedings arise;
- (c) specify any special capacity in which the representative party is bringing the proceedings or any special capacity in which the proceedings are brought against the defender;
- (d) summarise the circumstances out of which the proceedings arise; and
- (e) set out the grounds on which the action proceeds.

(3) There is to be appended to a summons in a group proceedings action a schedule listing the documents founded on or adopted as incorporated in the summons, which is also to be lodged as an inventory of productions.

Defences

26A.20.—(1) Defences in proceedings to which this Chapter applies are to be in the form of answers to the summons with any additional statement of facts or legal grounds on which it is intended to rely.

(2) There is to be appended to the defences in proceedings to which this Chapter applies a schedule listing the documents founded on or adopted as incorporated in the defences, which must be lodged as an inventory of productions.

PART 7 PROCEDURE

Preliminary hearing

26A.21.—(1) An action in proceedings to which this Chapter applies is to call for a preliminary hearing within 14 days after defences have been lodged.

(2) At the preliminary hearing, the Lord Ordinary—

- (a) is to determine whether and to what extent and in what manner further specification of the claims and defences must be provided;
- (b) may make an order in respect of any of the following matters—
 - (i) detailed written pleadings to be made by a party either generally or restricted to particular claims or issues;
 - (ii) a statement of facts to be made by one or more parties either generally or restricted to particular claims or issues;
 - (iii) the allowing of an amendment by a party to their pleadings;
 - (iv) disclosure of the identity of witnesses and the existence and nature of documents relating to the proceedings or authority to recover documents either generally or specifically;
 - (v) documents constituting, evidencing or relating to the subject-matter of the proceedings or any correspondence or similar documents relating to the proceedings to be lodged in process within a specified period;
 - (vi) each party to lodge in process, and send to every other party, a list of witnesses;
 - (vii) reports of skilled persons or witness statements to be lodged in process;
 - (viii) affidavits concerned with any of the issues in the proceedings to be lodged in process; and
 - (ix) to proceed to a hearing without any further preliminary procedure either in relation to the whole, or any particular aspect or any particular claim, of the proceedings;
- (c) may fix the period within which any such order is to be complied with;

- (d) may continue the preliminary hearing to a date to be appointed by the Lord Ordinary;
 - (e) may make such other order as the Lord Ordinary thinks fit for the efficient determination of the proceedings.
- (3) Where the Lord Ordinary makes an order under paragraph (2)(b)(i) or (ii) or (2)(c), the Lord Ordinary may ordain the representative party to—
- (a) make up a record; and
 - (b) lodge that record in process within such period as the Lord Ordinary thinks fit.
- (4) At the conclusion of the preliminary hearing, the Lord Ordinary must, unless the Lord Ordinary has made an order under paragraph (2)(b)(ix), fix a date for a case management hearing to determine further procedure.
- (5) The date fixed under paragraph (4) for a case management hearing may be extended on cause shown by application to the court, by motion, not less than two days prior to the date fixed for the case management hearing.
- (6) In paragraph (2)(b)(i) to (iii) “party” and “parties” may, where the Lord Ordinary so orders after being addressed on the matter, include a group member, group members or a sub-set of group members.

Case management hearing

26A.22.—(1) Not less than 14 days, or such other period as may be prescribed by the Lord Ordinary at the preliminary hearing, before the date fixed under rule 26A.21(4) for the case management hearing, each party must—

- (a) lodge in process and, at the same time, send to every other party a written statement of proposals for further procedure which must state—
 - (i) whether the party seeks to have the proceedings appointed to debate or to have the proceedings sent to proof on the whole or any part of it;
 - (ii) what the issues are which the party considers should be sent to debate or proof; and
 - (iii) the estimated duration of any debate or proof;
 - (b) where it is sought to have the proceedings appointed to proof, lodge a list of the witnesses the party proposes to cite or call to give evidence, identifying the matters to which each witness is to speak;
 - (c) where it is sought to have the proceedings appointed to proof, lodge the reports of any skilled persons;
 - (d) where it is sought to have the proceedings appointed to debate, lodge a note of argument consisting of concise numbered paragraphs stating the legal propositions on which it is proposed to submit that any preliminary plea should be sustained or repelled with reference to the principal authorities and statutory provisions to be founded on; and
 - (e) send a copy of any such written statement, lists, reports or note of argument, as the case may be, to every other party.
- (2) At the case management hearing, the Lord Ordinary—
- (a) must determine whether the group proceedings are to be appointed to debate or sent to proof on—
 - (i) all or some of the claims;
 - (ii) all or some of the issues raised by the claims, made in the proceedings;
 - (b) where the proceedings are appointed to debate or sent to proof, may order that written arguments on any question of law must be submitted;

- (c) where the proceedings are sent to proof, may determine whether evidence at the proof is to be by oral evidence, the production of documents or affidavits on any issue;
- (d) where the proceedings are sent to proof, may direct that parties serve on one another, and lodge in process, signed witness statements or affidavits from each witness whose evidence they intend to adduce, setting out in full the evidence which it is intended to take from that witness, and fix a timetable for the service (whether by exchange or otherwise) and lodging of such statements or affidavits as may be thought necessary;
- (e) may direct that such witness statements or affidavits are to stand as evidence in chief of the witness concerned, subject to such further questioning in chief as the Lord Ordinary may allow;
- (f) may determine, in the light of any witness statements, affidavits or reports produced, that proof is unnecessary on any issue;
- (g) where the proceedings are sent to proof, may appoint parties to be heard at a pre-proof hearing under rule 26A.24;
- (h) may direct that skilled persons hold a meeting with a view to reaching agreement and identifying areas of disagreement, and may order them thereafter to produce a joint note, to be lodged in process by one of the parties, identifying areas of agreement and disagreement, and the basis of any disagreement;
- (i) without prejudice to Chapter 12 (assessors)(a), may appoint an expert to examine, on behalf of the court, any reports of skilled persons or other evidence submitted and to report to the court within such period as the Lord Ordinary may specify;
- (j) where the proceedings are sent to proof, may make an order fixing the time allowed for the examination and cross-examination of witnesses;
- (k) may, on the motion of a party, direct the proceedings to be determined on the basis of written submissions, or such other material, without any oral hearing;
- (l) may continue the case management hearing to a date to be appointed by the Lord Ordinary;
- (m) may make an order for parties to produce a joint bundle of productions arranged in chronological order or such other order as will assist in the efficient conduct of the proof;
- (n) may order and fix a date for a further case management hearing or fix a date for the hearing of any debate or proof;
- (o) may make such other order as the Lord Ordinary thinks fit.

Debates

26A.23.—(1) Where a party seeks to have the proceedings appointed to debate, the application must include—

- (a) the legal argument on which any preliminary plea is to be sustained or repelled;
- (b) the principal authorities (including statutory provisions) on which the argument is founded.

(2) Following application being made to the court under paragraph (1), before determining whether the action is to be appointed to debate the Lord Ordinary is to hear from the parties with a view to ascertaining whether agreement can be reached on the points of law in contention.

(3) The Lord Ordinary, having heard the parties, is to determine whether the action is to be appointed to debate.

(a) Chapter 12 was amended by S.S.I. 2007/7.

(4) Where the action is appointed to debate, the Lord Ordinary may order that written arguments on any question of law are to be submitted.

(5) With the exception of rule 28.1(3)(d) which is not to apply, Chapter 28 (procedure roll), applies to a debate ordered under rule 26A.22(2)(a) as it applies to a cause appointed to the Procedure Roll.

Pre-proof hearing

26A.24. Not less than 2 days prior to any hearing appointed under rule 26A.22(2)(g), parties must lodge in process an estimated timetable for the conduct of the proof together with a note of any issues which are to be addressed prior to the proof.

Lodging of productions for proof

26A.25.—(1) Unless an earlier date is specified by the Lord Ordinary, any document not previously lodged but required for any proof in proceedings to which this Chapter applies must be lodged as a production not less than 7 days before the date fixed for the proof.

(2) No document may be lodged as a production after the date referred to in paragraph (1), even by agreement of all parties, unless the court is satisfied that any document sought to be lodged could not with reasonable diligence have been lodged in time.

PART 8

WITHDRAWAL FROM GROUP PROCEEDINGS

Withdrawal of claim from group proceedings

26A.26. The lodging with the court of a group register, in revised form, under rule 26A.15(3)(a) or (4)(a), following the withdrawal from the group of a group member, amounts to the point at which the person concerned withdraws consent for their claim to be brought in the group proceedings.

PART 9

ORDERS OF THE COURT

Power to make orders

26A.27. At any time before final judgment, the Lord Ordinary may, at the Lord Ordinary's own instance or on the motion of any party, make such order as the Lord Ordinary thinks necessary to secure the fair and efficient determination of the proceedings.

Effect of interlocutor given in group proceedings

26A.28.—(1) Subject to paragraph (2), an interlocutor given in group proceedings—

- (a) must describe or otherwise identify the group members who will be affected by it; and
- (b) binds all such persons, other than any person who has, as at the date of the interlocutor, withdrawn their consent to their claim being brought in the proceedings.

(2) An interlocutor given in group proceedings prior to a person joining the group as a group member binds such a person, except where the Lord Ordinary, on cause shown, orders otherwise.

Failure to comply with rule or order of Lord Ordinary

26A.29. Any failure by a party to comply timeously with a provision in these Rules or any order made by the Lord Ordinary in proceedings to which this Chapter applies entitles the Lord Ordinary, at his or her own instance—

- (a) to refuse to extend any period of compliance with a provision in these Rules or an order of the court;
- (b) to dismiss the action, as the case may be, in whole or in part;
- (c) to grant decree in respect of all or any of the conclusions of the summons, as the case may be; or
- (d) to make an award of expenses,

as the Lord Ordinary thinks fit.

PART 10 SETTLEMENT

Settlement of proceedings

26A.30. The representative party must consult with the group members on the terms of any proposed settlement before any damages in connection with the proceedings may be distributed.”.

(6) For rule 38.3(3) (leave to reclaim etc. in certain cases)(a), substitute—

“(3) An interlocutor, other than an interlocutor—

- (a) deciding whether to give permission (including the giving of permission either subject to conditions or only on particular grounds) for group proceedings to be brought under Chapter 26A (group procedure);
- (b) deciding whether to grant permission for the application to proceed under section 27B(1) of the Act of 1988(b) or an interlocutor determining the application, pronounced under Chapter 58 (applications for judicial review)(c),

may be reclaimed against only with the leave of the Lord Ordinary within 14 days after the date on which the interlocutor was pronounced.”.

(7) In the appendix (forms)—

- (a) after Form 13.2-A (form of summons and backing)(d), insert Form 13.2-AA (form of summons and backing – actions subject to Chapter 26A Procedure (Group Procedure));
- (b) in Form 13.7 (form of citation of defender) after “(name of pursuer)”, on both occasions where it appears, insert “[or (name of lead pursuer, if any, in proceedings to which Chapter 26A applies)]”;
- (c) after Form 26.1-C (form of third party notice by third party), insert—
 - (i) Form 26A.5 (form of application under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 seeking authorisation to be a representative party);
 - (ii) Form 26A.8 (form of application under 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 seeking the replacement of a representative party);
 - (iii) Form 26A.9 (form of application under section 20(5) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 for permission for group proceedings to be brought);

(a) Rule 38.3 was substituted by S.S.I. 2010/30 and amended by S.S.I. 2015/228.

(b) Section 27B was inserted by the Courts Reform (Scotland) Act 2014 (asp 18), section 89 and amended by S.I. 2015/700.

(c) Chapter 58 was substituted by S.S.I. 2015/228 and amended by S.S.I. 2017/200.

(d) Form 13.2-A was last amended by S.S.I. 2008/349.

- (iv) Form 26A.14-A (group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – opt-in proceedings – form of notice of consent for a person’s claim to be brought in group proceedings);
- (v) Form 26A.14-B (group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – opt-in proceedings – notice withdrawing consent for a person’s claim to be brought in group proceedings);
- (vi) Form 26A.15 (group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – opt-in proceedings – the group register);
- (vii) Form 26A.16 (group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) Scotland) Act 2018 – opt-in proceedings – late application); and
- (viii) Form 26A.17 (group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – opt-in proceedings – withdrawal of consent for a claim to be brought in group proceedings).

CJM SUTHERLAND
Lord President
I.P.D.

Edinburgh
8th July 2020

SCHEDULE

Paragraph 2(7)

Form 13.2-AA

Rule 13.2(1A)

**Form of Summons and backing – actions subject to Chapter 26A Procedure
(Group Procedure)**



(This space will contain the cause reference number assigned to the summons on being presented for signeting and registration)

IN THE COURT OF SESSION

SUMMONS

in the cause

[A.B.], Representative Party *(full name, designation and address)*

Representative Party for Pursuers

against

[C.D.] *(designation, statement of any special capacity in which the defender[s] is [are] being sued, and address)*

Defender[s]

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith, to [C.D.].

By this summons, the court having authorised [A.B.] to be a representative party in group proceedings and having granted permission to [A.B.] to bring the proceedings, the representative party for the pursuers craves the Lords of our Council and Session to pronounce a decree against you in terms of the conclusions appended to this summons. If you have any good reason why such decree should not be pronounced, you must enter appearance at the Office of Court, Court of Session, 2 Parliament Square, Edinburgh EH1 1RQ, within three days after the date of the calling of the summons in court. The summons shall not call in court earlier than [21] days after the date of service on you of this summons.

Be warned that, if appearance is not entered on your behalf, the representative party for the pursuers may obtain decree against you in your absence.

This summons is warrant for intimation to *(name and address and reason for intimation as set out in the rule of the Rules of the Court of Session 1994 requiring intimation)*.

Given under our Signet at Edinburgh on *(date)*

(Signed)

(Name and address of agent for representative party)

Warrant for diligence

This summons is warrant for [arrestment to found jurisdiction] [arrestment *in rem* *(details of ship or cargo)*] [dismantling *(details of ship)*].

(Signed)

Lord/Lady

Date: *(date)*

(Next page – back of first page and following pages)

(State the conclusions, followed by the condescendence and pleas-in-law.)

(Backing of summons)

This space will contain the cause reference number assigned to the summons on being presented for signeting and registration)

IN THE COURT OF SESSION

Summons

in the cause

[A.B.], Representative Party for Pursuers

against

[C.D.], Defender[s]

Action of *(nature of action as in the appropriate heading, if any, of the forms of conclusion shown in Form 13.2-B)*.

(Name of firm of agent for Representative Party for Pursuers)

Form 26A.5

Rule 26A.5(1)

Form of application under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 seeking authorisation to be a representative party

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

IN THE COURT OF SESSION

APPLICATION

for

AUTHORISATION TO BE A REPRESENTATIVE PARTY

under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

by

[A.B.], [Representative Party] (*full name, designation and address*)

Applicant

HUMBLY SHEWETH:-

1. The applicant, (*insert full name, designation and address of the applicant*), applies under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”) for authorisation by the court to be a representative party to bring group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*), each of whom has a separate claim which may be the subject of civil proceedings.
2. The applicant [*is a member of the group of persons on whose behalf proceedings are to be brought*] [*is not a member of the group of persons on whose behalf proceedings are to be brought*]. [*In the event that the applicant is not a member of the group on whose behalf proceedings are to be brought*] The applicant is (*insert the capacity in which the applicant is applying to be a representative party*).]
3. A description of the group of persons on whose behalf proceedings are to be brought is as follows:—

(insert a full and detailed description of the group of persons on whose behalf group proceedings are to be brought).

4. The steps taken by the applicant to identify and notify all potential members of the group about the group proceedings are as follows:—

(insert a statement setting out all the efforts made by the applicant to identify and notify all potential members of the group about the proceedings).

5. The applicant is [*an appropriate person who*] [*a body which*] can fairly and adequately represent the interests of the group, should authorisation under section 20(3)(b) of the Act be given by the court for the following reasons:—

(insert a full and detailed note to include the following:—

the special abilities and relevant expertise of the applicant;

the applicant's own interest in the proceedings;

whether there would be any potential benefit to the applicant, financial or otherwise, should the application be authorised;

confirmation that the applicant is independent from the defender;

a demonstration that the applicant would act fairly and adequately in the interests of the group members as a whole, and that the applicant's own interests do not conflict with those of the group whom the applicant seeks to represent;

a demonstration of sufficient competence by the applicant, including financial resources, to litigate the claims properly, and to meet any expenses awards (the details of funding arrangements do not require to be disclosed)).

6. The applicant [*has*] [*has not*] previously applied to the court for such authorisation relating, to any extent, to the same matter. [*(Where any such previous application has been made, insert details (including, in particular, the outcome of such application)).*]

MAY IT THEREFORE please your
Lordships to make an order authorising
[A.B.] to be a Representative Party

According to Justice, etc.

(Signed)

Applicant

[*or Solicitor [or Agent] for [Applicant]*]

(Date)

Form 26A.8

Rule 26A.8(1) or (2)

Form of application under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 seeking the replacement of a representative party

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

IN THE COURT OF SESSION

APPLICATION

in the cause (Cause Reference No.)

for

REPLACEMENT OF A REPRESENTATIVE PARTY

under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

by

[A.B.], [Representative Party] [Group Member] (*full name, designation and address*)

Applicant

HUMBLY SHEWETH:-

1. The applicant, (*insert full name, designation and address of the applicant*), was authorised by the court to be a representative party to bring group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*), each of whom has a separate claim which may be the subject of civil proceedings, on (*insert date*). The applicant applies, under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”), seeking the authority of the court to withdraw as the representative party in those group proceedings and be replaced with another person (“Person A”) (*insert full name, designation and address of Person A*).

or

The representative party, (*insert full name, designation and address of the representative party*), was authorised by the court to be a representative party to bring group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*), each of whom has a separate claim which may be the subject of civil proceedings, on (*insert date*). The applicant, (*insert full name, designation and address of the applicant*), applies under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”), for authorisation by the court to appoint Person A (*insert full name, designation and address of Person A*) as a representative party to bring group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*) in place of the representative party.

2. Person A (*insert full name*) [*is a member of the group of persons on whose behalf proceedings are to be brought [have been brought]*] [*is not a member of the group of persons on whose behalf proceedings are to be brought [have been brought]*]. [*In the event that Person A is not a member of the group on whose behalf proceedings are to be brought or have been brought*] Person A is (*insert the capacity in which Person A may be, or is applying to be, a representative party*).]

3. The applicant can no longer act as the representative party in the group proceedings and, accordingly, seeks the authorisation of the court to withdraw and be replaced as the representative party by Person A for the following reasons:—

(insert detailed reasons as to why the applicant can no longer act as the representative party in the group proceedings).

or

The applicant seeks the authority of the court to appoint Person A to bring the group proceedings in place of the representative party (*insert full name of the representative party*) for the following reasons:—

(insert detailed reasons as to why the court should authorise the replacement of the representative party with Person A).

4. Person A (*insert full name*) is a suitable [*person who*] [*body which*] can act in the capacity of representative person should such authorisation be given, having regard to the matters mentioned in rule 26A.7(2), for the following reasons:—

(insert a full and detailed note to include the following:—

the special abilities and relevant expertise of Person A;

Person A’s own interest in the proceedings;

whether there would be any potential benefit to Person A, financial or otherwise, should the application be authorised;

confirmation that Person A is independent from the defender;

a demonstration that Person A would act fairly and adequately in the interests of the group members as a whole, and that Person A's own interests do not conflict with those of the group whom Person A seeks to represent;

a demonstration of sufficient competence by Person A, including financial resources, to litigate the claims properly, and to meet any expenses awards (the details of funding arrangements do not require to be disclosed)).

5. Person A (*insert full name*) [*has*] [*has not*] previously applied to the court for such authorisation relating, to any extent, to the same matter. [*Where any such previous application has been made, insert details (including, in particular, the outcome of such application)*].

MAY IT THEREFORE please your
Lordships to make an order authorising
[Person A] to be a Representative Party

According to Justice, etc.

(Signed)

Representative Party [Applicant]

[*or Solicitor [or Agent] for Representative
Party [Applicant (insert full name)]*]

(Date)

FORM 26A.9

Rule 26A.9(1)

Form of application under section 20(5) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 for permission for group proceedings to be brought

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

IN THE COURT OF SESSION

APPLICATION

for

PERMISSION FOR GROUP PROCEEDINGS TO BE BROUGHT

under section 20(5) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

by

[A.B.], *[Representative Party]* (full name, designation and address)

Applicant

against

[C.D.] (full name[s], designation(s) and address[es])

Defender[s]

1. [A.B.], *[Representative Party]*, (insert full name, designation and address of the applicant) applies for permission for group proceedings (within the meaning given in section 20(1) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”)) to be brought on behalf of (insert details, in brief, of the group of two or more persons), each of whom has a separate claim which may be the subject of civil proceedings.
2. The applicant *[has applied for authorisation by the court to be a representative party (within the meaning of section 20(2) of the Act)]* *[is a representative party (within the meaning of section 20(2) of the Act)]*.
3. The applicant *[is a member of the group of persons on whose behalf proceedings are to be brought]* *[is not a member of the group of persons on whose behalf proceedings are to be brought]*. *[(In the event that the applicant is not a member of the group on whose behalf proceedings are to be brought) The applicant is (insert the capacity in which the applicant is applying to be a representative party).]*
4. [The lead pursuer, if any, in the group proceedings is (insert full name, designation and address of the lead pursuer, if there is one).]

5. The defender[s] in the group proceedings is [are] *(insert full name[s] and address[es] of the defender[s]).*

6. The grounds on which the applicant seeks permission for group proceedings to be brought are as follows:—

(set out the grounds in numbered paragraphs, to include the information set out below:—

confirmation that all the claims made in the proceedings raise issues (whether of fact or law) that are the same as, or similar or related to, each other, and provide a detailed summary of the issues;

the steps taken by the applicant to identify and notify all potential members of the group about the proceedings;

demonstration that there is a prima facie case;

demonstration that it is a more efficient administration of justice for the claims to be brought as group proceedings rather than as separate individual proceedings;

demonstration that the proposed proceedings have any real prospects of success;

the number and nature of any proceedings relating to the same matter as the application for permission which have already been raised, if applicable, failing which confirmation that no such proceedings have been raised;

the number of parties, including the number of group members, that are likely to be involved in the proceedings;

the aggregate total value of the claims;

confirmation as to whether there are any matters that distinguish smaller groups of claims within the wider group and, if so, a note of such matters.).

8. A list of persons who have consented to being members of the group on whose behalf group proceedings are proposed to be brought is attached *(attach a list of persons who have consented to being members of the group on whose behalf group proceedings are proposed to be brought).*

(Signed)

Solicitor [or Agent] for [A.B.],
Applicant [Representative Party]

(Date)

FORM 26A.14-A

Rule 26A.14(1)

Group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – Opt-in proceedings – Form of notice of consent for a person’s claim to be brought in group proceedings

This Form is to be completed by you for the purpose of providing express consent for your claim, which may be the subject of civil proceedings, to be brought in group proceedings (within the meaning of section 20(1) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”)) under section 20(7)(a) of the Act.

Before your claim can be brought in the group proceedings the completed Form must be sent to your Representative Party (within the meaning of section 20(2) of the Act), or to the person who has submitted, or is to submit, an application for such authorisation to the court under section 20(3)(b) of the Act, as the case may be.

You may send this Form to your Representative Party (or, as the case may be, the person who has submitted, or is to submit, an application for such authorisation to the court) either by posting the notice or, where your representative party (or, as the case may be, that person) has confirmed that they accept e-mail service, by using electronic means.

Name (provide your full name and designation):

Address (provide your full address, including postcode):

Date of birth (provide your date of birth):

Contact telephone number (provide your contact telephone number):

E-mail address (provide your email address):

Lead pursuer (if any) in the group proceedings is

(insert full name, designation and address of the lead pursuer (if any and if known)):

Defender[s] in the group proceedings is [are]

(insert full name[s] and address[es] of the defender[s] (if known)):

Claim:

(provide a full and detailed summary of your claim to include all such information which shows that you satisfy the eligibility criteria to be a member of the group on whose behalf group proceedings are to be, or have been, brought, such as:—

any reference numbers/individual identifiers (for example, washing machine serial number and model number, NHS number or airline flight number etc.);

the date of purchase, date of your injury or operation (as the case may be) etc.;

evidence in support of your claim must be provided).

I confirm that I am aware that by providing my express consent for my claim to be brought in group proceedings that I will be bound by interlocutors pronounced by the court in the proceedings, should the court grant permission for the bringing of the proceedings. I confirm that I am aware that this could include interlocutors pronounced by the court in the proceedings prior to my joining the group.

I, hereby, provide my express consent to [*insert the name and address of your Representative Party, or the person who has sought, or is to seek, such authority of the court*] to bring the group proceedings on my behalf.

[I confirm that no other civil proceedings are ongoing in respect of my claim, nor have I settled my claim judicially or non-judicially.]

I consent to the sharing of the information provided within this notice by [*insert the name and address of your Representative Party, or the person who has sought, or is to seek, such authority of the court*] with the Court of Session.

I consent to the sharing of my information which may be recorded in the Group Register (my name, address, date of birth and any additional information relevant to my claim) with the defender in accordance with Chapter 26A of the Rules of the Court of Session.

The further sharing of the information provided within this notice, or any such other personal data in connection with my claim, by [*insert the name and address of your Representative Party, or the person who has sought, or is to seek, such authority of the court*] may only be done with my express consent.

(Signed)

Pursuer

[*or Solicitor [or Agent] for [Pursuer]*]

(Date)

FORM 26A.14-B

Rule 26A.14(2)

Group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – Opt-in proceedings – Notice withdrawing consent for a person’s claim to be brought in group proceedings

This Form is to be completed by you if you are a member of a group of persons on whose behalf group proceedings (within the meaning of section 20(1) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”)) are to be, or have been, brought and you no longer consent for your claim to be brought in the proceedings under section 20(7)(a) of the Act.

The completed Form must be sent to your Representative Party (within the meaning of section 20(2) of the Act), or to the person who has submitted, or is to submit, an application for such authorisation to the court under section 20(3)(b) of the Act, before your claim is no longer brought in the group proceedings.

You may send this Form to your Representative Party (or, as the case may be, the person who has submitted, or is to submit, an application for such authorisation to the court) either by posting the notice or, where your Representative Party (or, as the case may be, that person) has confirmed that they accept e-mail service, by using electronic means.

Name (provide your full name and designation):

Address (provide your full address, including postcode):

Date of birth (provide your date of birth):

Contact telephone number (provide your contact telephone number):

E-mail address (provide your email address):

Lead pursuer (if any) in the group proceedings is

(insert full name, designation and address of the pursuer (if any and if known)):

Defender[s] in the group proceedings is [are]

(insert full name[s] and address[es] of the defender[s] (if known)):

Claim:

(provide a full and detailed summary of your claim and the date on which you provided your express consent to your Representative Party to bring proceedings on your behalf)

I, hereby, withdraw my consent which I had given to [insert the name and address of your Representative Party, or the person who has sought, or is to seek, such authority of the court] for my claim to be brought in the group proceedings on my behalf.

I consent to the information provided within this notice to be shared by *[insert the name and address of your Representative Party, or the person who has sought, or is to seek, such authority of the court]* with the Court of Session.

I acknowledge that by withdrawing my consent for my claim to be brought in the group proceedings on my behalf the defender is to be advised of my withdrawal from the proceedings by the service of a revised Group Register in accordance with Chapter 26A of the Rules of the Court of Session.

The further sharing of the information provided within this notice, or any such other personal data in connection with my claim, by *[insert the name and address of your Representative Party, or the person who has sought, or is to seek, such authority of the court]* may only be done with my express consent.

(Signed)

Pursuer

[or Solicitor [or Agent] for [Pursuer]]

(Date)

FORM 26A.15

Rule 26A.15(1)

Group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – Opt-in proceedings – the Group Register

Received the day of 20

(Date of receipt of this register)

..... *(signed)*

Depute Clerk of Session

[in the cause (Cause Reference No.)]

IN THE COURT OF SESSION

GROUP PROCEEDINGS [TO BE BROUGHT] [*or* BROUGHT]

under Part 4 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

by

[A.B.], [Representative Party] (full name, designation and address)

[Representative Party for Pursuers]

[*or* Applicant seeking authorisation of the court under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 for Pursuers]

against

[C.D.] (*full name(s), designation(s) and address(es)*)

Defender[s]

I, [A.B.] (*insert full name, designation and address of the Representative Party or as the case may be, the person who has applied for authorisation by the court under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 to be a Representative Party*), [Representative Party], [*is to bring*] [*has brought*] group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*), each of whom has a separate claim which may be the subject of civil proceedings.

I, hereby, provide the court with a list of all those persons who, as of [*insert the date of lodging this group register with the court and service upon the defender*], expressly consent to be members of the group on whose behalf group proceedings [*are to be*] [*have been*] brought.

I certify that there are no other civil proceedings ongoing as of [*insert the date of lodging this group register with the court and service upon the defender*], and that no claims have been settled judicially or non-judicially, in respect of the issues raised in the claims (whether of fact or law) of the persons listed below in this Form.

I certify that the group proceedings are brought within the statutory limitation period in respect of the claims of the persons listed below in this Form.

I certify that the Court of Session is the appropriate forum for the group proceedings to be brought in respect of the claims of the persons listed in this Form.

Name:	Address:	Date of birth:	Additional info — e.g. reference or serial no.:
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
etc.			
...			

(Signed)

Solicitor [*or* Agent] for [Representative Party] [*or* Applicant seeking authorisation of the court under section 20(3)(b) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018]

(Date)

FORM 26A.16

Rule 26A.16(2)

Group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – Opt-in proceedings – Late application

UNTO THE RIGHT HONOURABLE THE LORDS OF COUNCIL AND SESSION

in the cause (Cause Reference No.)

The application of [A.B.] (*full name, designation and address*), Representative Party, on behalf of [E.F.] (*full name, designation and address*) for their claim to be brought in the group proceedings, although late

IN THE COURT OF SESSION

GROUP PROCEEDINGS BROUGHT

under Part 4 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

by

[A.B.] (*full name, designation and address*), Representative Party, on behalf of [E.F.] (*full name, designation and address*)

Representative Party for Pursuers

against

[C.D.] (*full name[s], designation[s] and address[es]*)

Defender[s]

HUMBLY SHEWETH:-

1. I, [A.B.] (*insert full name, designation and address*), Representative Party, have brought group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*), each of whom has a separate claim which may be the subject of civil proceedings.
2. A proof was allowed in the group proceedings on (*insert date on which proof was allowed*).

3. I, [A.B.] (*insert full name*), Representative Party, received notice in Form 26A.14-A from [E.F.] (*insert full name, designation and address*) on (*insert date*). [A.B.], (*insert full name*), Representative Party, applies to the court on behalf of [E.F.] (*insert full name*) seeking authorisation for [E.F.]'s (*insert full name*) claim to be brought in the group proceedings, although late.
4. The reason[s] why [E.F.] (*insert full name*) did not opt into the group proceedings before the allowance of proof in the proceedings is [are] as follows:—

(insert reason[s], in full as to why no application to opt-in to the group proceedings was made by E.F. before now and provide arguments, in full, as to why it is reasonable for E.F. to be authorised by the court to be a group member in the proceedings despite the late stage in the proceedings of this application.)
5. I, [A.B.] (*insert full name*), Representative Party, certify that no claims have been settled judicially or non-judicially, in respect of [E.F.]'s (*insert full name*) claim (whether of fact or law).
6. I, [A.B.] (*insert full name*), certify that the group proceedings are brought within the statutory limitation period in respect of [E.F.]'s (*insert full name*) claim.
7. I, [A.B.] (*insert full name*), certify that the Court of Session is the appropriate forum for [E.F.]'s (*insert full name*) claim to be brought in the group proceedings.

MAY IT THEREFORE please your Lordships
to make an order authorising [E.F.] to be a
group member in the group proceedings

According to Justice, etc.

(Signed)

Solicitor [*or Agent*] for Representative Party

(Date)

FORM 26A.17

Rule 26A.17(2)

Group proceedings under section 20(7)(a) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 – Opt-in proceedings – Withdrawal of consent for a claim to be brought in group proceedings

IN THE COURT OF SESSION

GROUP PROCEEDINGS BROUGHT

in the cause (Cause Reference No.)

under Part 4 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018

by

[A.B.] (*full name, designation and address*)

Representative Party for Pursuers

against

[C.D.] (*full name[s], designation[s] and address[es]*)

Defender[s]

1. I, [A.B.] (*insert full name, designation and address*), Representative Party, have brought group proceedings on behalf of (*insert details, in brief, of the group of two or more persons*), each of whom has a separate claim which may be the subject of civil proceedings.
2. I, [A.B.], (*insert full name, designation and address*), Representative Party, received notice in Form 26A.14-B from [E.F.] (*insert full name[s], designation[s] and address[es]*) withdrawing their consent for their claim[s] to be brought in the group proceedings on (*insert date*).
3. [The proof in the group proceedings commenced on (*insert date*). This application is made following the commencement of a proof in the proceedings.]

[*and/or* In the event that the court were to grant this application there would be less than two persons having a claim in the proceedings.]

4. The reason[s] why [E.F.] (*insert full name*) seeks to withdraw from the group proceedings [following the commencement of proof in the proceedings] [*and/or* which, in the event that the court were to grant this application would result in there being less than two persons having a claim in the proceedings] is [*are*] as follows:—

(insert reason[s] in full as to either (or both):—

why no application to withdraw from the group proceedings was made by E.F. before now and provide arguments, in full, as to why it is reasonable for E.F. to withdraw from the proceedings despite the late stage in the proceedings of this application;

why it is reasonable for E.F. to withdraw from the group proceedings despite the fact that should the application be approved by the court it would result in there being less than two persons having claims in the proceedings.).

- 6 The court is invited to consider this application, after representations being given by [C.D.] (*insert full name[s], designation[s] and address[es]*), the defender[s].

(Signed)

Solicitor [*or* Agent] for Representative Party

(Date)

EXPLANATORY NOTE

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

This Act of Sederunt makes provision about group procedure, as provided by Part 4 of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (“the Act”). Group procedure is a new form of proceedings available in the Court of Session. The instrument amends the Rules of the Court of Session (“the RCS”) by, among other matters, the insertion of new Chapter 26A by paragraph 2(5), and comes into force on 31st July 2020.

General Provisions

Part 1 of Chapter 26A makes general provision. The procedural framework, as provided by rule 26A.3 and Part 7 of Chapter 26A, provides the court with flexibility as to how to deal with these new proceedings efficiently.

Numerous applications are made to the court under the new procedure, by motion. Rule 26A.4 provides that Chapter 23 (motions) of the RCS applies to motions made under Chapter 26A and that they may be intimated and enrolled by email.

Representative Party

The Act provides that a person who is a representative party may bring group proceedings on behalf of a group of persons. Under section 20(3)(b) of the Act a person may be a representative party only if authorised by the court. Part 2 of Chapter 26A, and Forms 26A.5 and 26A.8, makes relevant provision for this.

Permission to bring Group Proceedings

Under section 20(5) of the Act group proceedings may be brought only with the permission of the court. The court may give permission where it is satisfied that the criteria set out in section 20(6)(a) and (b) of the Act are met and, by section 20(6)(c), in accordance with provision made in Part 3 of Chapter 26A. The applicant must, together with an application, lodge the summons by which it is proposed to institute proceedings, a record of group members and relevant supporting documentation. Applications for permission are determined in accordance with rule 26A.11(5). Where the court gives permission for group proceedings to be brought under rule 26A.12, the Lord Ordinary makes an order which sets out certain specified matters about the group. Under rule 26A.13 an appeal against a decision of the court on an application for permission is made by reclaiming motion. By virtue of paragraph 2(6) of the Act of Sederunt leave to reclaim is not required in such appeals.

Opt-in Procedure

The Act of Sederunt provides for group proceedings to be brought as opt-in proceedings under section 20(7)(a) of the Act. Part 4 of Chapter 26A, together with the accompanying Forms, make relevant provision. Under rule 26A.14, notices are sent by potential group members to the representative party (or the person who has applied, or is to apply, to be a representative party), who then records persons who are group members in a group register. Under rule 26A.15, the register must be lodged with the court and served on the defender. The representative party must be satisfied that the person may be a group member before they can record the person as a group member on the register. This includes an assessment of their claim and being satisfied that it raises issues (whether of fact or law) which are the same as, or similar or related, to each other and subject to the proceedings, and being satisfied that their claim has not prescribed before joining the register.

The membership of the group may change during the course of the group proceedings either by the joining of new group members or by the departure from the group of group members. Group members withdraw their consent to their claims being brought in group proceedings in the same way as persons join the group, by the sending of a notice in Form 26A.14-B, to the representative party.

The Act of Sederunt makes provision for the procedure that is to be followed in cases where a person seeks to join or leave a group late in the proceedings or, where their leaving results in there being less than two pursuers, by rules 26A.16 and 26A.17 respectively.

Commencement of Group Proceedings

Part 5 of Chapter 26A makes provision setting out when proceedings are deemed to have commenced by group members in a group proceeding action. It is the point at which the group register is served on the defender or, in the case of eligible persons who join the group proceedings at a later stage, the lodging with the court of a revised group register. Where application is made by a person to join the group proceedings late, and the court allows such application, then it is the point at which the application is made.

Summonses and Defences

Part 6 of Chapter 26A, and Form 13.2-AA, make provision for pleadings in group proceedings. Form 13.2-AA prescribes a new summons Form for these proceedings.

Procedural Framework

Part 7 of Chapter 26A sets out the procedural framework for group proceedings, which comprises preliminary hearings, case management hearings, debates, pre-proof hearings and the lodging of productions for proof.

Withdrawal of Group Members from Group Proceedings

Part 8 of Chapter 26A makes provision setting out the point in group proceedings at which a group member withdraws consent for their claim to be brought in the proceedings. It is the point at which the revised group register is lodged with the court.

Orders of the Court

Part 9 of Chapter 26A makes provision concerning orders of the court in group proceedings. Rule 26A.27 permits the Lord Ordinary to make such orders as are necessary to secure the fair and efficient determination of the proceedings. Provision is made by rule 26A.28 about interlocutors given in group proceedings, and their effect. Rule 26A.29 provides powers to the Lord Ordinary in connection with a failure by a party to comply with the RCS or with any order of the Lord Ordinary in group proceedings.

Settlement

Part 10 of Chapter 26A makes provision about settlement of group proceedings. Under rule 26A.30 the representative party must consult with group members on the terms of any proposed settlement before any damages in connection with the proceedings may be distributed.

Consequential Provision

Consequential amendment of the RCS is made by paragraph 2(2) to (4) and (6) of the Act of Sederunt.

Forms

New Forms are inserted into the appendix to the RCS, and Form 13.7 is amended, by paragraph 2(7) of the Act of Sederunt.

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<http://www.legislation.gov.uk/id/ssi/2020/208>