

CMS Scotland - Kernel

Class actions

Introduction

Scotland has a thriving food and drink sector, supported by a successful hospitality industry and products unique to the country by virtue of geographic indicators. Scotland's economic and jurisdictional advantages have attracted numerous domestic and international companies to register entities here, creating multiple jurisdictional ties and increasing legal risks.

From a litigation perspective, these risks have become particularly acute since the introduction in 2020 of "group procedure" — Scotland's equivalent of US-style class actions. Group procedure poses the greatest threat to businesses whose products reach large numbers of consumers, placing the food and drink sector squarely in the firing line. CMS's annual Class Actions Report notes a growing trend in the use of class actions as a vehicle for mass damages across Europe, with numerous actions already raised in the food and drink sector.

Areas of class action risk in the food and drink sector

Employee Group Claims. Group proceedings extend beyond product consumer claims. One of the first Scottish group procedure cases was brought by workers in Kenya against their employer, a company registered in Scotland, arising from allegations of musculoskeletal injuries. This illustrates that employee classes can form across borders, and that companies may face litigation in Scotland simply by virtue of being registered here.

Environmental Claims. Scotland's whisky industry presents a significant opportunity for claimant firms to "book build" potential claims. Claims have already been brought against whisky manufacturers for environmental and property damage arising from distillation processes, suggesting that group proceedings on similar grounds may not be far off.

Ultra-processed Foods. An emerging threat relates to "ultra-processed" foods ("**UPFs**"). In San Francisco, California has

launched proceedings against food manufacturers alleging deceptive and misleading marketing practices. Although no such cases have yet been raised in Scotland, it is foreseeable that US claimant firms may seek to build classes in new jurisdictions.

The "No Safe Level of Alcohol" Narrative. The "no safe level of alcohol" narrative, endorsed by the WHO and the US Surgeon General, is being leveraged by NGOs acting in concert with claimant firms and litigation funders. A class action is already underway in Canada, and US claimant lawyers are actively recruiting clients. Drawing on parallels with the tobacco industry, claimants are expected to advance both "failure to warn" claims and allegations of bad corporate conduct. This risk is compounded by the forthcoming EU Product Liability Directive, which introduces consumer-friendly features such as reversal of the burden of proof, making the management of internal documents and external communications a critical priority.

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Risk mitigation strategies

Group proceedings are a present and growing risk, particularly for consumer-facing industries. The following preparatory steps should be considered:

- Evaluate risk: identify where issues have already arisen, where there are mass consumer touch points, or where regulatory scrutiny is focused.
- Recognise the claimant “playbook”: trends are emerging in how these actions are conducted. Companies should engage with others who have faced similar claims and prioritise speed of response.
- Manage reputational risks: prepare communications and PR lines in advance and ensure key stakeholders understand the risks.
- Consider alternatives: if a problem exists, explore positive steps to ensure greater control over redress.
- Review insurance: ensure that existing policies cover group proceedings.

Looking to the Future: Opt-Out Group Procedure

At present, only opt-in group proceedings may be brought in Scotland, requiring group members to actively join a claim. However, the Scottish Civil Justice Commission (“**SCJC**”) has now prioritised opt-out procedure in its 2025/26 work programme. An opt-out mechanism automatically includes persons in a claim without individual consent — meaning, in a food and drink context, that every purchaser of a particular product could be included unless they actively opt out. This is the driver behind the significant sums claimed in class actions globally.

The potential scale is significant. Using the UK Competition Appeal Tribunal (“**CAT**”) Collective Proceedings Order regime as a proxy, as at October 2025, 60 applications had been filed encompassing over **708 million class members**, with an aggregate quantum of approximately £135.95 billion projected to exceed **£200.6 billion by 2030**. Were Scotland to introduce an opt-out regime for all causes of action — rather than competition claims alone — it would become the only UK jurisdiction with such broad scope. Economy-wide costs of mass litigation in the UK have been estimated at up to **£18 billion**, with potential market capitalisation losses for the most innovative firms of up to **£11.2 billion**. Key Scottish sectors, including food and drink, would face heightened exposure.

Conclusion

Class action risk in the Scottish food and drink sector continues to grow, particularly with the potential introduction of opt-out procedure. The best defence is preparation. CMS is uniquely placed to support clients navigating this evolving landscape, with dedicated expertise spanning the food and drink sector, regulatory and product liability risk, and class actions and group litigation. Our integrated teams work across Scotland, England and internationally, giving us a cross-border perspective on emerging trends and claimant strategies.

Join us for our Class Actions event to debate if Scotland will become a litigation hotspot on 11 June. Please click here:

[Class actions in Scotland: Will Scotland become a litigation hotspot?](#)

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Kernel is designed to support you on current legal issues affecting the Scottish Food & Drink industry and provide regular updates on key developments. To view the full Kernel series, please click here: [Kernel 2025 | Food & drink series | CMS Scotland](#)