

This draft Statutory Instrument supersedes the draft of the same title which was laid before Parliament on 27th January 2010 and published on 28th January 2010. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Regulations laid before Parliament under section 120(4) of the Courts and Legal Services Act 1990, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.000

LEGAL SERVICES, ENGLAND AND WALES

The Damages-Based Agreements Regulations 2010

Made - - - - 000
Coming into force - - 6th April 2010

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 58AA(4) and 120(3) of the Courts and Legal Services Act 1990(1).

He has consulted the designated judges, the General Council of the Bar, the Law Society and such other bodies as he considered appropriate in accordance with section 58AA(6) of that Act.

A draft of this instrument has been laid before and approved by both Houses of Parliament in accordance with section 120(4) of that Act(2).

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Damages-Based Agreements Regulations 2010 and come into force on 6th April 2010.

(2) In these Regulations—

“the Act” means the Courts and Legal Services Act 1990;

“client” means the person who has instructed the representative to provide advocacy services, litigation services (within the meaning of section 119 of the Act) or claims management services (within the meaning of section 4(2)(b) of the Compensation Act 2006(3)) and is liable to make a payment for those services;

“costs” means the total of the representative’s time reasonably spent, in respect of the claim or proceedings, multiplied by the reasonable hourly rate of remuneration of the representative;

“damages-based agreement” means a damages-based agreement which relates to an employment matter;

(1) 1990 c. 41. Section 58AA was inserted by section 154 of the Coroners and Justice Act 2009 c. 25.

(2) Section 120(4) was amended by section 154(3) of the Coroners and Justice Act 2009.

(3) 2006 c. 29.

“expenses” means disbursements incurred by the representative, including counsel’s fees and the expense of obtaining an expert’s report;

“payment” means a part of the sum recovered in respect of the claim or damages awarded that the client agrees to pay the representative and excludes expenses;

“representative” means the person providing the advocacy services, litigation services or claims management services to which the damages-based agreement relates.

(3) These Regulations apply to all damages-based agreements signed on or after the date on which these Regulations come into force.

Requirements of an agreement

2. The requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must specify—

- (a) the claim or proceedings or parts of them to which the agreement relates;
- (b) the circumstances in which the representative’s payment, expenses and costs, or part of them, are payable; and
- (c) the reason for setting the amount of the payment at the level agreed, including having regard to, where appropriate, whether the claim or proceedings is one of several similar claims or proceedings.

Information to be given before an agreement is made

3.—(1) The information prescribed for the purposes of section 58AA(4)(d) of the Act is—

- (a) information, to be provided to the client in writing, about the matters in paragraph (2); and
- (b) such further explanation, advice or other information about any of those matters as the client may request.

(2) Those matters are—

- (a) the circumstances in which the client may seek a review of the costs and expenses of the representative and the procedure for doing so;
- (b) the dispute resolution service provided by the Advisory, Conciliation and Arbitration Service (ACAS) in regard to actual and potential claims;
- (c) whether other methods of pursuing the claim or financing the proceedings, including—
 - (i) advice under the Community Legal Service,
 - (ii) legal expenses insurance,
 - (iii) pro bono representation, or
 - (iv) trade union representation,are available, and, if so, how they apply to the client and the claim or proceedings in question;
- (d) the point at which expenses become payable; and
- (e) a reasonable estimate of the amount that is likely to be spent upon expenses, inclusive of VAT.

Additional causes of action

4. Any amendment to a damages-based agreement to cover additional causes of action must be in writing and signed by the client and the representative.

The payment

5. The amount prescribed for the purposes of section 58AA(4)(b) of the Act is the amount which, including VAT, is equal to 35% of the sum ultimately recovered by the client in the claim or proceedings.

Terms and conditions of termination

6.—(1) The additional requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must be in accordance with paragraphs (2), (3) and (4).

(2) If the agreement is terminated, the representative may not charge the client more than the representative's costs and expenses for the work undertaken in respect of the client's claim or proceedings.

(3) The client may not terminate the agreement—

(a) after settlement has been agreed; or

(b) within seven days before the start of the tribunal hearing.

(4) The representative may not terminate the agreement and charge costs unless the client has behaved or is behaving unreasonably.

(5) Paragraphs (3) and (4) do not disapply the law of misrepresentation.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the requirements with which an agreement between a client and his or her representative must comply so as to enable it to be a damages-based agreement relating to an employment matter under section 58AA of the Courts and Legal Services Act 1990.

Regulation 2 specifies the requirements of the agreement.

Regulation 3 specifies the information that must be given before an agreement can be made.

Regulation 4 specifies that additional causes of action can be added to the agreement by written and signed amendment.

Regulation 5 provides that the amount of the payment, including VAT, must not be greater than 35% of the sum ultimately recovered by the client. "Payment" is defined in regulation 1.

Regulation 6 states that the terms and conditions of an agreement that provide for the termination of the agreement must comply with the following: if the agreement is ended then the representative cannot charge more than his or her costs and expenses for the work done in respect of the client's claim or proceedings; the client may not end the agreement at particular stages; the representative may not end the agreement unless the client has been or is being unreasonable; nothing in regulation 6 prevents the law of misrepresentation from applying.

An impact assessment has been prepared for these Regulations and can be requested by writing to the Ministry of Justice Private Funding Branch at: privatefundingbranch@justice.gsi.gov.uk