

# ACCESS TO JUSTICE ACT 1999

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## EXPLANATORY NOTES

A.

### FUNDING OF LEGAL SERVICES (PARTS I & II, SECTIONS 1-34)

#### *Commentary*

#### **Part II: Other funding of legal services**

##### **Costs**

137. **Section 29: Recovery of insurance premiums by way of costs.** This section makes provision to allow the court to include, in any costs it may award against the losing party, any premium paid for an insurance policy taken out specifically against the need to meet the other side's costs in those proceedings. It is not limited to insurance policies taken out alongside a conditional fee agreement.
138. **Section 30: Recovery where body undertakes to meet costs liabilities.** This section is a parallel provision to section 29. It applies to bodies, such as trade unions, which fund litigation on behalf of their members from the body's own resources; and do not, therefore, take out separate insurance against having to meet the other side's costs. When such a body supports a successful case, section 30 will allow the costs awarded to include an amount equivalent to the insurance premium that would have been recoverable (under section 29) if a policy had been in place.
139. **Section 30** empowers the Lord Chancellor to prescribe which bodies may operate in this way and on precisely what terms. This will enable him to ensure that the amounts recovered fairly reflect the risk that the body had borne.
140. **Section 31: Rules as to costs.** This section allows rules of court about the award of costs to provide that the amount awarded need not be limited to the amount that the litigant would have been liable to pay his or her own lawyers if costs had not been awarded.
141. **Section 31** is a general provision allowing rules of court to limit or abolish the common law principle known as the indemnity principle. This is that the successful party in an action has a right to be indemnified (wholly or partly) against a liability for costs actually incurred in bringing or defending the proceedings, and no more. If no actual costs have been agreed for payment by the client, then no costs should be paid by the losing party. For many years, this was held to prevent recovery from the unsuccessful party of any part of a solicitor's fee which was contingent on the success of the case. More recently, a combination of case law and statutory provisions (most notably the 1990 Act) have greatly reduced the application of the indemnity principle in its pure form. Recent case law has also made its application more cumbersome in practice. The Government believes that the partial survival of the principle is anomalous; section 31 is intended to rationalise the position.