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## 2000 No. 692

### LEGAL SERVICES, ENGLAND AND WALES

#### The Conditional Fee Agreements Regulations 2000

<i>Made</i> - - - - -	<i>9th March 2000</i>
<i>Laid before Parliament</i>	<i>10th March 2000</i>
<i>Coming into force</i> - -	<i>1st April 2000</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 58(3)(c), 58A(3) and 119 of the Courts and Legal Services Act 1990(a) and all other powers enabling him hereby makes the following Regulations:

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Conditional Fee Agreements Regulations 2000.

(2) These Regulations come into force on 1st April 2000.

(3) In these Regulations—

“client” includes, except where the context otherwise requires, a person who—

(a) has instructed the legal representative to provide the advocacy or litigation services to which the conditional fee agreement relates, or

(b) is liable to pay the legal representative’s fees in respect of those services; and

“legal representative” means the person providing the advocacy or litigation services to which the conditional fee agreement relates.

#### **Requirements for contents of conditional fee agreements: general**

2.—(1) A conditional fee agreement must specify—

(a) the particular proceedings or parts of them to which it relates (including whether it relates to any appeal, counterclaim or proceedings to enforce a judgement or order),

(b) the circumstances in which the legal representative’s fees and expenses, or part of them, are payable,

(c) what payment, if any, is due—

(i) if those circumstances only partly occur,

(ii) irrespective of whether those circumstances occur, and

(iii) on the termination of the agreement for any reason, and

(d) the amounts which are payable in all the circumstances and cases specified or the method to be used to calculate them and, in particular, whether the amounts are limited by reference to the damages which may be recovered on behalf of the client.

(2) A conditional fee agreement to which regulation 4 applies must contain a statement that the requirements of that regulation which apply in the case of that agreement have been complied with.

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(a) 1990 c. 41; sections 58 and 58A are substituted by section 27 of the Access to Justice Act 1999 (c. 22); section 119 is an interpretation provision and is cited because of the meaning given to the word “prescribed”.

**Requirements for contents of conditional fee agreements providing for success fees**

- 3.—(1) A conditional fee agreement which provides for a success fee—
- (a) must briefly specify the reasons for setting the percentage increase at the level stated in the agreement, and
  - (b) must specify how much of the percentage increase, if any, relates to the cost to the legal representative of the postponement of the payment of his fees and expenses.
- (2) If the agreement relates to court proceedings, it must provide that where the percentage increase becomes payable as a result of those proceedings, then—
- (a) if—
    - (i) any fees subject to the increase are assessed, and
    - (ii) the legal representative or the client is required by the court to disclose to the court or any other person the reasons for setting the percentage increase at the level stated in the agreement,he may do so,
  - (b) if—
    - (i) any such fees are assessed, and
    - (ii) any amount in respect of the percentage increase is disallowed on the assessment on the ground that the level at which the increase was set was unreasonable in view of facts which were or should have been known to the legal representative at the time it was set,that amount ceases to be payable under the agreement, unless the court is satisfied that it should continue to be so payable, and
  - (c) if—
    - (i) sub-paragraph (b) does not apply, and
    - (ii) the legal representative agrees with any person liable as a result of the proceedings to pay fees subject to the percentage increase that a lower amount than the amount payable in accordance with the conditional fee agreement is to be paid instead,the amount payable under the conditional fee agreement in respect of those fees shall be reduced accordingly, unless the court is satisfied that the full amount should continue to be payable under it.
- (3) In this regulation “percentage increase” means the percentage by which the amount of the fees which would be payable if the agreement were not a conditional fee agreement is to be increased under the agreement.

**Information to be given before conditional fee agreements made**

- 4.—(1) Before a conditional fee agreement is made the legal representative must—
- (a) inform the client about the following matters, and
  - (b) if the client requires any further explanation, advice or other information about any of those matters, provide such further explanation, advice or other information about them as the client may reasonably require.
- (2) Those matters are—
- (a) the circumstances in which the client may be liable to pay the costs of the legal representative in accordance with the agreement,
  - (b) the circumstances in which the client may seek assessment of the fees and expenses of the legal representative and the procedure for doing so,
  - (c) whether the legal representative considers that the client’s risk of incurring liability for costs in respect of the proceedings to which agreement relates is insured against under an existing contract of insurance,
  - (d) whether other methods of financing those costs are available, and, if so, how they apply to the client and the proceedings in question,
  - (e) whether the legal representative considers that any particular method or methods of financing any or all of those costs is appropriate and, if he considers that a contract of insurance is appropriate or recommends a particular such contract—
    - (i) his reasons for doing so, and
    - (ii) whether he has an interest in doing so.

(3) Before a conditional fee agreement is made the legal representative must explain its effect to the client.

(4) In the case of an agreement where—

- (a) the legal representative is a body to which section 30 of the Access to Justice Act 1999<sup>(a)</sup> (recovery where body undertakes to meet costs liabilities) applies, and
- (b) there are no circumstances in which the client may be liable to pay any costs in respect of the proceedings,

paragraph (1) does not apply.

(5) Information required to be given under paragraph (1) about the matters in paragraph (2)(a) to (d) must be given orally (whether or not it is also given in writing), but information required to be so given about the matters in paragraph (2)(e) and the explanation required by paragraph (3) must be given both orally and in writing.

(6) This regulation does not apply in the case of an agreement between a legal representative and an additional legal representative.

#### **Form of agreement**

**5.**—(1) A conditional fee agreement must be signed by the client and the legal representative.

(2) This regulation does not apply in the case of an agreement between a legal representative and an additional legal representative.

#### **Amendment of agreement**

**6.** Where an agreement is amended to cover further proceedings or parts of them—

- (a) regulations 2, 3 and 5 apply to the amended agreement as if it were a fresh agreement made at the time of the amendment, and
- (b) the obligations under regulation 4 apply in relation to the amendments in so far as they affect the matters mentioned in that regulation.

#### **Revocation of 1995 Regulations**

**7.** The Conditional Fee Agreements Regulations 1995<sup>(b)</sup> are revoked.

*Irvine of Lairg, C*

9th March 2000

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(a) 1999 c. 22.

(b) S.I. 1995/1675.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 58(1) of the Courts and Legal Services Act 1990 provides that a conditional fee agreement is not unenforceable if it satisfies certain conditions. These include conditions to be specified in regulations under section 58(3) of that Act. Regulations 2 and 3 specify those conditions. Regulation 2 applies to all conditional fee agreements. Regulation 3 sets out further requirements applying only to agreements which provide for success fees.

Section 58A(3) enables the conditions which may be prescribed for conditional fee agreements to include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made. Regulation 4 imposes such a requirement and specifies what information is to be given. It does not apply where the agreement is between legal representatives.

Regulation 5 requires that agreements other than those between legal representatives must be signed by the client and the legal representative.

Regulation 6 provides for similar requirements to apply as respects amendments of agreements.

These regulations replace the Conditional Fee Agreements Regulations 1995, which are revoked.

£1.50

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E674 03/00 495196 19585

ISBN 0-11-098922-8



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