
EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations prescribe the requirements with which a damages-based agreement (“DBA”) must comply in order to be enforceable under section 58AA of the Courts and Legal Services Act 1990 (c.41) (“the Act”).

DBAs are a type of ‘no win, no fee’ agreement under which a representative (defined in these Regulations as a person providing the advocacy services, litigation services or claims management services to which the DBA relates) can recover an agreed percentage of a client’s damages if the case is won (“the payment”), but will receive nothing if the case is lost.

Prior to amendment by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10), section 58AA of the Act only provided for the regulation of DBAs used in employment matters. The effect of the amendment, subject to exceptions, is to permit and regulate the use of DBAs in all civil litigation.

These Regulations apply to all DBAs, including those which relate to employment matters, entered into or signed on or after the date on which they come into force. However, section 58AA(9) of the Act provides that, where section 57 of the Solicitors Act 1974 (c.47) applies to a DBA (other than one relating to an employment matter), it is not unenforceable only because it does not satisfy the conditions in section 58AA(4), under which these Regulations are made. Accordingly, article 1(4) excludes those DBAs to which section 57 of the Solicitors Act 1974 applies from the scope of these Regulations. Further, the effect of regulation 4 is limited to all DBAs other than those which relate to employment matters, whereas regulations 5, 6, 7 and 8 only apply to DBAs in respect of employment matters.

Regulation 2 revokes the Damages-Based Agreements Regulations 2010 (SI 2010/1206), which applied only to employment matters and which will continue to have effect in respect of any DBA relating to an employment matter signed before the date on which these Regulations come into force. However, these Regulations make similar separate provision in respect of employment matters.

Regulation 3 applies to all DBAs and specifies the requirements of a DBA.

Regulation 4, which applies to all DBAs other than those which relate to employment matters, provides that the payment from a client’s damages shall be the sum agreed to be paid (which, where relevant, will include any disbursements incurred by the representative in respect of counsel’s fees) net of any costs (including fixed costs), or sum in respect of counsel’s fees, payable to the representative by another party to the proceedings.

Regulation 4 also provides that:

- in a claim for personal injuries, the amount to be paid by a client, including VAT, must not be greater than 25% of the combined total of the damages recovered by the client in the proceedings for pain, suffering and loss of amenity and pecuniary loss (other than future pecuniary loss), net of any sums recoverable by the Compensation Recovery Unit. The 25% cap will only apply to claims or proceedings at first instance; and
- in any other claim or proceedings to which these Regulations apply, the amount of the payment, including VAT, must not be greater than 50% of the sums ultimately recovered by the client. The 50% cap will only apply to claims or proceedings at first instance.

Regulations 5, 6, 7 and 8 apply only to DBAs in respect of employment matters.

Regulation 5 specifies the information that a representative must provide before a DBA is made.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 6 specifies that additional causes of action can be added to the agreement by written and signed amendment.

Regulation 7 provides for the maximum amount that is payable to the representative from a client's damages under a DBA in respect of an employment matter, so that the amount of the payment, including VAT, must not be greater than 35% of the sums ultimately recovered by the client in the claim or proceedings.

Regulation 8 states that the terms and conditions of an agreement that provide for the termination of the DBA in an employment matter must comply with the following requirements: 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 8 prevents a party from exercising a right under the general law of contract to terminate the agreement, for example for misrepresentation or fundamental breach.