

*Draft Order 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

2013 No. 000

LEGAL SERVICES, ENGLAND AND WALES

The Conditional Fee Agreements Order 2013

Made - - - - *******
Coming into force - - *1st April 2013*

The Lord Chancellor in exercise of the powers conferred on him by sections 58(4)(a) and (c), 58(4A)(b), (4B)(c) and (d) and 120(3) of the Courts and Legal Services Act 1990(1), having consulted in accordance with section 58A(5) of that Act, makes the following Order, a draft of which has been laid and approved by each House of Parliament in accordance with section 120(4)(2) of that Act.

Citation, commencement, interpretation and application

1.—(1) This Order may be cited as the Conditional Fee Agreements Order 2013 and will come into force on 1st April 2013.

(2) In this Order—

“the 1986 Act” means the Insolvency Act 1986(3);

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

“claim for personal injuries” has the same meaning as in Rule 2.3 of the Civil Procedure Rules 1998(4);

“company” means a company within the meaning of section 1 of the Companies Act 2006(5) or a company which may be wound up under Part V of the 1986 Act;

“diffuse mesothelioma” has the same meaning as in section 48(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(6);

“news publisher” means a person who publishes a newspaper, magazine or website containing news or information about or comment on current affairs;

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- (1) [1990 c.41](#). Section 58 was substituted by section 27(1) of the Access to Justice Act 1999 ([c.22](#)) and amended by section 44 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ([c.10](#)).
- (2) Section 120(4) was amended by section 154(3) of the Coroners and Justice Act 2009 ([c.25](#)) and sections 44(5) and 45(12) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
- (3) [1986 c.45](#), to which there have been amendments not relevant to this Order.
- (4) [S.I. 1998/3132](#), to which there have been amendments not relevant to this Order.
- (5) [2006 c.46](#), to which there have been amendments not relevant to this Order.
- (6) [2012 c.10](#).

“publication and privacy proceedings” means proceedings for—

- (a) defamation;
- (b) malicious falsehood;
- (c) breach of confidence involving publication to the general public;
- (d) misuse of private information; or
- (e) harassment, where the defendant is a news publisher.

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

Agreements providing for a success fee

2. All proceedings which, under section 58 of the Act, can be the subject of an enforceable conditional fee agreement, except proceedings under section 82 of the Environmental Protection Act 1990(7), are proceedings specified for the purpose of section 58(4)(a) of the Act.

Amount of success fee

3. In relation to all proceedings specified in article 2, the percentage specified for the purposes of section 58(4)(c) of the Act is 100%.

Specified proceedings

4. A claim for personal injuries shall be proceedings specified for the purpose of section 58(4A)(b) of the Act.

Amount of success fee in specified proceedings

5.—(1) In relation to the proceedings specified in article 4, the percentage prescribed for the purposes of section 58(4B)(c) of the Act is—

- (a) in proceedings at first instance, 25%; and
- (b) in all other proceedings, 100%.

(2) The descriptions of damages specified for the purposes of section 58(4B)(d) of the Act are—

- (a) general damages for pain, suffering, and loss of amenity; and
- (b) damages for pecuniary loss, other than future pecuniary loss,

net of any sums recoverable by the Compensation Recovery Unit of the Department for Work and Pensions.

Transitional and saving provisions

6.—(1) Articles 4 and 5 do not apply to a conditional fee agreement which is entered into before the date upon which this Order comes into force if—

- (a) the agreement was entered into specifically for the purposes of the provision to a person (“P”) of advocacy or litigation services in connection with the matter which is the subject of the proceedings; or
- (b) advocacy or litigation services were provided to P under the agreement in connection with those proceedings before that date.

(2) Articles 4 and 5 do not apply to any conditional fee agreement entered into in relation to—

(7) 1990 c.43.

- (a) proceedings relating to a claim for damages in respect of diffuse mesothelioma;
- (b) publication and privacy proceedings;
- (c) proceedings in England and Wales brought by a person acting in the capacity of—
 - (i) a liquidator of a company which is being wound up in England and Wales or Scotland under Parts IV or V of the 1986 Act; or
 - (ii) a trustee of a bankrupt's estate under Part IX of the 1986 Act;
- (d) proceedings brought by a person acting in the capacity of an administrator appointed pursuant to the provisions of Part II of the 1986 Act;
- (e) proceedings in England and Wales brought by a company which is being wound up in England and Wales or Scotland under Parts IV or V of the 1986 Act; or
- (f) proceedings brought by a company which has entered administration under Part II of the 1986 Act.

Revocation of 2000 Order

- 7. The Conditional Fee Agreements Order 2000(8) is revoked.

Signed by authority of the Lord Chancellor

Date

Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 58 and 58A of the Courts and Legal Services Act 1990 (c.41) (“the 1990 Act”) make provision as regards the regulation of conditional fee agreements (“CFAs”) and the recoverability of success fees payable under a CFA. Under these provisions, all proceedings may be the subject of an enforceable CFA, save for specified family proceedings and all criminal proceedings other than those under section 82 of the Environmental Protection Act 1990 (c.43).

Sections 58 and 58A of the 1990 Act were amended by section 44 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the 2012 Act”). The effect of the amendments is that a success fee payable under a CFA may no longer be recovered by a lawyer from a losing party, but, subject to additional conditions under section 58(4A) and (4B), will be recoverable by a lawyer from their successful client.

This Order makes provision as to how the success fee should be calculated. To that end, article 7 of this Order revokes the Conditional Fee Agreements Order 2000 (SI 2000/823), but its provisions are replicated in this Order, first, in article 2, which provides that all proceedings which may be the subject of a conditional fee agreement, except criminal proceedings under section 82 of the Environmental Protection Act 1990, may provide for a success fee, and, secondly, in article 3, which sets the maximum success fee percentage at 100% of the lawyer’s fee.

Section 58(4A) of the 1990 Act provides that CFAs which provide for a success fee and which relate to proceedings specified by the Lord Chancellor must comply with certain additional conditions (including conditions which may be specified by order made by the Lord Chancellor under section 58(4B)) in order to be enforceable. Article 4 specifies claims for personal injury for these purposes.

Notwithstanding the effect of article 3, section 58(4B) of the 1990 Act, enables the Lord Chancellor, in respect of proceedings specified by order under section 58(4A), to effectively cap the lawyer’s success fee at a percentage of specified damages awarded to the client. Article 5 provides that, in a claim for personal injuries, the success fee shall be limited to a maximum of 25% of the damages awarded for pain, suffering and loss of amenity and pecuniary loss, other than future pecuniary loss and net of any sums recoverable by the Compensation Recovery Unit, inclusive of VAT.

Article 5 further limits the effect of the 25% cap to proceedings at first instance. In respect of all other personal injury proceedings (i.e. appeals), the maximum success fee which may be recovered from damages awarded for pain, suffering and loss of amenity and pecuniary loss, other than future pecuniary loss and net of any sums recoverable by the Compensation Recovery Unit, shall be a maximum of 100% of those damages, inclusive of VAT.

Article 6 contains a transitional and saving provision. The effect of the transitional provision is to provide that articles 4 and 5 do not apply to a CFA entered into in respect of a claim for personal injuries, or to a collective CFA under which advocacy or litigation services are provided to a person in respect of that claim, before the day on which these regulations comes into force.

The effect of section 48 of the 2012 Act is that the amendments made by section 44 of that Act will not, for the time being, apply to a claim for damages in respect of diffuse mesothelioma proceedings. Additionally, section 44 will not be commenced, for the time being, in respect of publication and privacy proceedings (which are defined in this Order) and proceedings which are, or which relate to, insolvency proceedings. The effect of the saving provision in article 6 is to provide that articles 4 and 5 will not apply to these proceedings.

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Conditional Fee Agreements Order 2013 No. 689*