



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

##### *Miscellaneous*

#### **58 Conditional fee agreements**

- (1) In this section “a conditional fee agreement” means an agreement in writing between a person providing advocacy or litigation services and his client which—
  - (a) does not relate to proceedings of a kind mentioned in subsection (10);
  - (b) provides for that person’s fees and expenses, or any part of them, to be payable only in specified circumstances;
  - (c) complies with such requirements (if any) as may be prescribed by the Lord Chancellor; and
  - (d) is not a contentious business agreement (as defined by section 59 of the Solicitors Act 1974).
- (2) Where a conditional fee agreement provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not a conditional fee agreement, it shall specify the percentage by which that amount is to be increased.
- (3) Subject to subsection (6), a conditional fee agreement which relates to specified proceedings shall not be unenforceable by reason only of its being a conditional fee agreement.
- (4) In this section “specified proceedings” means proceedings of a description specified by order made by the Lord Chancellor for the purposes of subsection (3).
- (5) Any such order shall prescribe the maximum permitted percentage for each description of specified proceedings.

- (6) An agreement which falls within subsection (2) shall be unenforceable if, at the time when it is entered into, the percentage specified in the agreement exceeds the prescribed maximum permitted percentage for the description of proceedings to which it relates.
- (7) Before making any order under this section the Lord Chancellor shall consult the designated judges, the General Council of the Bar, the Law Society and such other authorised bodies (if any) as he considers appropriate.
- (8) Where a party to any proceedings has entered into a conditional fee agreement and a costs order is made in those proceedings in his favour, the costs payable to him shall not include any element which takes account of any percentage increase payable under the agreement.
- (9) Rules of court may make provision with respect to the taxing of any costs which include fees payable under a conditional fee agreement.
- (10) The proceedings mentioned in subsection (1)(a) are any criminal proceedings and any proceedings under—
  - (a) the Matrimonial Causes Act 1973;
  - (b) the Domestic Violence and Matrimonial Proceedings Act 1976;
  - (c) the Adoption Act 1976;
  - (d) the Domestic Proceedings and Magistrates' Courts Act 1978;
  - (e) sections 1 and 9 of the Matrimonial Homes Act 1983;
  - (f) Part III of the Matrimonial and Family Proceedings Act 1984;
  - (g) Parts I, II or IV of the Children Act 1989; or
  - (h) the inherent jurisdiction of the High Court in relation to children.

## **59 Representation under the Legal Aid Act 1988**

- (1) Nothing in this Part shall affect the right of a person who is represented in proceedings in the Supreme Court or the House of Lords under the Legal Aid Act 1988 to select his legal representative.
- (2) The power to make regulations with respect to representation under section 2(7) or 32(8) of that Act shall not be exercised so as to provide that representation in any such proceedings may only be by a single barrister, solicitor or other legal representative (but that is not to be taken as restricting the power to make regulations under section 34(2)(e) of that Act).

## **60 Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales**

- (1) The Lord Chancellor may by regulations prescribe circumstances in which, and conditions subject to which, a practitioner who is qualified to practise in Scotland or Northern Ireland may, in such capacity as may be prescribed, exercise in England and Wales—
  - (a) prescribed rights of audience; or
  - (b) prescribed rights to conduct litigation,without being entitled to do so apart from the regulations.

- (2) The Lord Chancellor may by regulations make provision for the purpose of enabling practitioners who are qualified to practise in Scotland or Northern Ireland to become qualified to practise in England and Wales on terms, and subject to conditions, corresponding or similar to those on which practitioners who are qualified to practise in member States may become qualified to practise in that jurisdiction.
- (3) Regulations made under subsection (1) may, in particular—
- (a) prescribe any right of audience which may not be exercised by a person in England and Wales unless he is instructed to act together with a person who has that right of audience there;
  - (b) prescribe legal services which may not be provided by any person practising by virtue of the regulations;
  - (c) prescribe the title or description which must be used by any person practising by virtue of the regulations;
  - (d) provide for the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified;
  - (e) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations.
- (4) Regulations made under subsection (1) or (2) may modify any rule of law or practice which the Lord Chancellor considers should be modified in order to give effect to the regulations.
- (5) In this section “practitioner” means—
- (a) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland or an advocate or solicitor in Scotland; and
  - (b) any person falling within such category as may be prescribed.

## **61 Right of barrister to enter into contract for the provision of his services**

- (1) Any rule of law which prevents a barrister from entering into a contract for the provision of his services as a barrister is hereby abolished.
- (2) Nothing in subsection (1) prevents the General Council of the Bar from making rules (however described) which prohibit barristers from entering into contracts or restrict their right to do so.

## **62 Immunity of advocates from actions in negligence and for breach of contract**

- (1) A person—
- (a) who is not a barrister; but
  - (b) who lawfully provides any legal services in relation to any proceedings,
- shall have the same immunity from liability for negligence in respect of his acts or omissions as he would have if he were a barrister lawfully providing those services.
- (2) No act or omission on the part of any barrister or other person which is accorded immunity from liability for negligence shall give rise to an action for breach of any contract relating to the provision by him of the legal services in question.

**63 Legal professional privilege**

- (1) This section applies to any communication made to or by a person who is not a barrister or solicitor at any time when that person is—
  - (a) providing advocacy or litigation services as an authorised advocate or authorised litigator;
  - (b) providing conveyancing services as an authorised practitioner; or
  - (c) providing probate services as a probate practitioner.
- (2) Any such communication shall in any legal proceedings be privileged from disclosure in like manner as if the person in question had at all material times been acting as his client’s solicitor.
- (3) In subsection (1), “probate practitioner” means a person to whom section 23(1) of the Solicitors Act 1974 (unqualified person not to prepare probate papers etc.) does not apply.

**64 Discrimination by, or in relation to, barristers**

- (1) The following shall be inserted in the Sex Discrimination Act 1975 after section 35—

*“Barristers***35A Discrimination by, or in relation to, barristers**

- (1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a woman—
  - (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately omitting, to offer it to her.
- (2) It is unlawful for a barrister or barrister’s clerk, in relation to a woman who is a pupil or tenant in the chambers in question, to discriminate against her—
  - (a) in respect of any terms applicable to her as a pupil or tenant;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to her;
  - (c) in the benefits, facilities or services which are afforded or denied to her; or
  - (d) by terminating her pupillage or by subjecting her to any pressure to leave the chambers or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a woman.
- (4) In this section—
 

“barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and

“pupil”, “pupillage”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.

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*Status: This is the original version (as it was originally enacted).*

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- (5) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.
- (6) This section does not apply to Scotland.”
- (2) The following shall be inserted in the Race Relations Act 1976 after section 26—

*“Barristers*

**26A Discrimination by, or in relation to, barristers**

- (1) It is unlawful for a barrister or barrister’s clerk, in relation to any offer of a pupillage or tenancy, to discriminate against a person—
- (a) in the arrangements which are made for the purpose of determining to whom it should be offered;
  - (b) in respect of any terms on which it is offered; or
  - (c) by refusing, or deliberately omitting, to offer it to him.
- (2) It is unlawful for a barrister or barrister’s clerk, in relation to a pupil or tenant in the chambers in question, to discriminate against him—
- (a) in respect of any terms applicable to him as a pupil or tenant;
  - (b) in the opportunities for training, or gaining experience which are afforded or denied to him;
  - (c) in the benefits, facilities or services which are afforded or denied to him; or
  - (d) by terminating his pupillage or by subjecting him to any pressure to leave the chambers or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against any person.
- (4) In this section—
- “barrister’s clerk” includes any person carrying out any of the functions of a barrister’s clerk; and
  - “pupil”, “pupillage”, “tenancy” and “tenant” have the meanings commonly associated with their use in the context of a set of barristers’ chambers.
- (5) This section does not apply to Scotland.”

**65 Discrimination by, or in relation to, advocates**

- (1) The following shall be inserted in the Sex Discrimination Act 1975 after section 35A (as inserted by this Act)—

*“Advocates*

**35B Discrimination by, or in relation to, advocates**

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a woman—

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*Status: This is the original version (as it was originally enacted).*

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- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
  - (b) in respect of any terms on which he offers to take her as his pupil; or
  - (c) by refusing, or deliberately omitting, to take her as his pupil.
- (2) It is unlawful for an advocate, in relation to a woman who is a pupil, to discriminate against her—
- (a) in respect of any terms applicable to her as a pupil;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to her;
  - (c) in the benefits, facilities or services which are afforded or denied to her; or
  - (d) by terminating the relationship or by subjecting her to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against a woman.
- (4) In this section—
- “advocate” means a member of the Faculty of Advocates practising as such; and
  - “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (5) Section 3 applies for the purposes of this section as it applies for the purposes of any provision of Part II.
- (6) This section does not apply to England and Wales.”
- (2) The following shall be inserted in the Race Relations Act 1976 after section 26A (as inserted by this Act)—

*“Advocates*

**26B Discrimination by, or in relation to, advocates**

- (1) It is unlawful for an advocate, in relation to taking any person as his pupil, to discriminate against a person—
- (a) in the arrangements which he makes for the purpose of determining whom he will take as his pupil;
  - (b) in respect of any terms on which he offers to take any person as his pupil; or
  - (c) by refusing, or deliberately omitting, to take a person as his pupil.
- (2) It is unlawful for an advocate, in relation to a person who is a pupil, to discriminate against him—
- (a) in respect of any terms applicable to him as a pupil;
  - (b) in the opportunities for training, or gaining experience, which are afforded or denied to him;
  - (c) in the benefits, facilities or services which are afforded or denied to him; or

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- (d) by terminating the relationship or by subjecting him to any pressure to terminate the relationship or other detriment.
- (3) It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to an advocate, to discriminate against any person.
- (4) In this section—
  - “advocate” means a member of the Faculty of Advocates practising as such; and
  - “pupil” has the meaning commonly associated with its use in the context of a person training to be an advocate.
- (5) This section does not apply to England and Wales.”.

## **66 Multi-disciplinary and multi-national practices**

- (1) Section 39 of the Solicitors Act 1974 (which, in effect, prevents solicitors entering into partnership with persons who are not solicitors) shall cease to have effect.
- (2) Nothing in subsection (1) prevents the Law Society making rules which prohibit solicitors from entering into any unincorporated association with persons who are not solicitors, or restrict the circumstances in which they may do so.
- (3) Section 10 of the Public Notaries Act 1801 (which, in effect, prevents notaries entering into partnership with persons who are not notaries) shall cease to have effect.
- (4) Nothing in subsection (3) prevents the Master of the Faculties making rules which prohibit notaries from entering into any unincorporated association with persons who are not notaries, or restrict the circumstances in which they may do so.
- (5) It is hereby declared that no rule of common law prevents barristers from entering into any unincorporated association with persons who are not barristers.
- (6) Nothing in subsection (5) prevents the General Council of the Bar from making rules which prohibit barristers from entering into any such unincorporated association, or restrict the circumstances in which they may do so.

## **67 Right of audience for solicitors in certain Crown Court centres**

—For section 83 of the Supreme Court Act 1981 (right of audience for solicitors) there shall be substituted the following section—

### **“83 Right of audience for solicitors in certain Crown Court centres**

- (1) The Lord Chancellor may at any time direct, as respects one or more specified places where the Crown Court sits, that solicitors, or such category of solicitors as may be specified in the direction, may have rights of audience in the Crown Court.
- (2) Any such direction may be limited to apply only in relation to proceedings of a description specified in the direction.
- (3) In considering whether to exercise his powers under this section the Lord Chancellor shall have regard, in particular, to the need to secure the availability of persons with rights of audience in the court or proceedings in question.

- (4) Any direction under this section may be revoked by direction of the Lord Chancellor.
- (5) Any direction under this section may be subject to such conditions and restrictions as appear to the Lord Chancellor to be necessary or expedient.
- (6) Any exercise by the Lord Chancellor of his power to give a direction under this section shall be with the concurrence of the Lord Chief Justice, the Master of the Rolls, the President of the Family Division and the Vice-Chancellor.”

## **68 Preparation of documents etc. by registered patent agents and trade mark agents**

- (1) Section 22 of the Solicitors Act 1974 (unqualified person not to prepare certain instruments) shall be amended as follows.
- (2) In subsection (2) (persons exempt from subsection (1)), the following paragraphs shall be inserted after paragraph (a)—
  - “(aa) a registered trade mark agent drawing or preparing any instrument relating to any design, trade mark or service mark;
  - (ab) a registered patent agent drawing or preparing any instrument relating to any invention, design, technical information, trade mark or service mark.”
- (3) The following subsection shall be inserted after subsection (3)—
  - “(3A) In subsection (2)—
    - “registered trade mark agent” has the same meaning as in section 282(1) of the Copyright, Designs and Patents Act 1988; and
    - “registered patent agent” has the same meaning as in section 275(1) of that Act.”

## **69 Exemption from liability for damages etc**

- (1) Neither the Lord Chancellor nor any of the designated judges shall be liable in damages for anything done or omitted in the discharge or purported discharge of any of their functions under this Part.
- (2) For the purposes of the law of defamation, the publication by the Lord Chancellor, a designated judge or the Director of any advice or reasons given by or to him in the exercise of functions under this Part shall be absolutely privileged.