

2003 No. 1240

LEGAL SERVICES, ENGLAND AND WALES

**The Conditional Fee Agreements (Miscellaneous
Amendments) Regulations 2003**

<i>Made</i> - - - - -	<i>30th April 2003</i>
<i>Laid before Parliament</i>	<i>9th May 2003</i>
<i>Coming into force</i> - -	<i>2nd June 2003</i>

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

Citation and commencement

1. These Regulations may be cited as the Conditional Fee Agreements (Miscellaneous Amendments) Regulations 2003 and shall come into force on 2nd June 2003.

Amendments to the Conditional Fee Agreements Regulations 2000

2.—(1) The Conditional Fee Agreements Regulations 2000(b) are amended in accordance with this regulation.

(2) After regulation 3, insert—

“Requirements where the client’s liability is limited to sums recovered

3A.—(1) This regulation applies to a conditional fee agreement under which, except in the circumstances set out in paragraph (5), the client is liable to pay his legal representative’s fees and expenses only to the extent that sums are recovered in respect of the relevant proceedings, whether by way of costs or otherwise.

(2) In determining for the purposes of paragraph (1) the circumstances in which a client is liable to pay his legal representative’s fees and expenses, no account is to be taken of any obligation to pay costs in respect of the premium of a policy taken out to insure against the risk of incurring a liability in the relevant proceedings.

(3) Regulations 2, 3 and 4 do not apply to a conditional fee agreement to which this regulation applies.

(4) A conditional fee agreement to which this regulation applies must—

(a) specify—

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

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

(a) 1990 c. 41. Sections 58 and 58A were 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”.

(b) S.I. 2000/692 amended by S.I. 2000/2988.

- (b) if it provides for a success fee—
 - (i) briefly specify the reasons for setting the percentage increase at the level stated in the agreement; and
 - (ii) provide that if, in court proceedings, the percentage increase becomes payable as a result of those proceedings and the legal representative or the client is ordered 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.

(5) A conditional fee agreement to which this regulation applies may specify that the client will be liable to pay the legal representative's fees and expenses whether or not sums are recovered in respect of the relevant proceedings, if the client—

- (a) fails to co-operate with the legal representative;
- (b) fails to attend any medical or expert examination or court hearing which the legal representative reasonably requests him to attend;
- (c) fails to give necessary instructions to the legal representative; or
- (d) withdraws instructions from the legal representative.

(6) Before a conditional fee agreement to which this regulation applies is made, the legal representative must inform the client as to the circumstances in which the client may be liable to pay the legal representative's fees and expenses, and provide such further explanation, advice or other information as to those circumstances as the client may reasonably require.”.

(3) In regulation 6(a), after “3”, insert “, 3A”.

Amendments to the Collective Conditional Fee Agreements Regulations 2000

3.—(1) The Collective Conditional Fee Agreements Regulations 2000(a) are amended in accordance with this regulation.

(2) In regulation 4, after paragraph (1), insert—

“(1A) The circumstances referred to in paragraph (1) may include the fact that the legal representative's fees and expenses are payable only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.”.

(3) After regulation 5(3), insert—

“(4) Sub-paragraphs (b) and (c) of paragraph (2) do not apply to a collective conditional fee agreement under which, except in the circumstances set out in paragraph (6), the client is liable to pay his legal representative's fees and expenses only to the extent that sums are recovered in respect of the proceedings, whether by way of costs or otherwise.

(5) In determining for the purposes of paragraph (4) the circumstances in which a client is liable to pay his legal representative's fees and expenses, no account is to be taken of any obligation to pay costs in respect of the premium of a policy taken out to insure against the risk of incurring a liability in the relevant proceedings.

(6) A collective conditional fee agreement to which paragraph (4) applies may specify that the client will be liable to pay his legal representative's fees and expenses whether or not sums are recovered in respect of the relevant proceedings, if the client—

- (a) fails to co-operate with the legal representative;
- (b) fails to attend any medical or expert examination or court hearing which the legal representative reasonably requests him to attend;
- (c) fails to give necessary instructions to the legal representative; or
- (d) withdraws instructions from the legal representative.”.

Irvine of Lairg, C.

Dated 30th April 2003

(a) S.I. 2000/2988.

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 the conditions applicable by and under that section, which include conditions specified in Regulations made by the Lord Chancellor under section 58(3)(c). These Regulations make amendments to the Conditional Fee Agreements Regulations 2000 and the Collective Conditional Fee Agreements Regulations 2000 to provide that a conditional fee agreement will be enforceable even though the client is liable to pay his legal representative's fees and expenses only if and to the extent that he recovers damages or costs in the proceedings. Amendments made to the Civil Procedure Rules 1998 provide that costs payable under such a conditional fee agreement are recoverable under Parts 44 to 48 of those Rules.

This in effect abrogates in relation to this type of conditional fee agreement the so-called indemnity principle—the principle that the amount which can be awarded to a party in respect of costs to be paid by him to his legal representatives is limited to what would have been payable by him to them if he had not been awarded costs. Solicitors will to this extent be able to agree lawfully with their clients not to seek to recover by way of costs anything in excess of what the court awards, or what it is agreed will be paid, and will no longer be prevented from openly contracting with their clients on such terms.

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