Draft Regulations 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 Damages-Based Agreements Regulations 2013

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

The Lord Chancellor in exercise of the powers conferred by sections 58AA(4) and (5) and 120(3) of the Courts and Legal Services Act 1990(**1**), having consulted in accordance with section 58AA(6) of that Act, makes the following Regulations, a draft of which has been laid before and approved by resolution of each House of Parliament in accordance with section 120(4)(**2**) of that Act.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Damages-Based Agreements Regulations 2013 and come into force on 1st April 2013.

(2) In these Regulations—

"the 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(**3**);

"client" means the person who has instructed the representative to provide advocacy services, litigation services (within section 119 of the Act) or claims management services (within the meaning of section 4(2)(b) of the Compensation Act 2006(**4**)) and is liable to make a payment for those services;

"costs" means the total of the representative's time reasonably spent, in respect of the claim or proceedings, multiplied by the reasonable hourly rate of remuneration of the representative;

"employment matter" means a matter that is, or could become, the subject of proceedings before an employment tribunal;

(**1**) 1990 c.41. Section 58AA was inserted by section 154 of the Coroners and Justices Act 2009 (c.25) and was amended by section 45 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 and sections 44(5) and 45(12) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
(**3**) S.I. 1998/3132, to which there have been amendments not relevant to these Regulations.
(**4**) 2006 c.29.

"expenses" means disbursements incurred by the representative, including the expense of obtaining an expert's report and, in an employment matter only, counsel's fees;

"payment" means that part of the sum recovered in respect of the claim or damages awarded that the client agrees to pay the representative, and excludes expenses but includes, in respect of any claim or proceedings to which these regulations apply other than an employment matter, any disbursements incurred by the representative in respect of counsel's fees;

"representative" means the person providing the advocacy services, litigation services or claims management services to which the damages-based agreement relates.

(3) Subject to paragraphs (4), (5) and (6), these Regulations shall apply to all damages-based agreements entered into on or after the date on which these Regulations come into force.

(4) Subject to paragraph (6), these Regulations shall not apply to any damages-based agreement to which section 57 of the Solicitors Act 1974(**5**) (non-contentious business agreements between solicitor and client) applies.

(5) In these Regulations—

(a) regulation 4 does not apply; and

(b) regulations 5, 6, 7 and 8 only apply,

to any damages-based agreement in respect of an employment matter.

(6) Where these Regulations relate to an employment matter, they apply to all damages-based agreements signed on or after the date on which these Regulations come into force.

Revocation of 2010 Regulations and transitional provision

2.—(1) Subject to paragraph (2), the Damages-Based Agreements Regulations 2010(**6**) ("the 2010 Regulations") are revoked.

(2) The 2010 Regulations shall continue to have effect in respect of any damages-based agreement to which those Regulations applied and which was signed before the date on which these Regulations come into force.

Requirements of an agreement in respect of all damages-based agreements

3. The requirements prescribed for the purposes of section 58AA(4)(c) of the Act are that the terms and conditions of a damages-based agreement must specify—

(a) the claim or proceedings or parts of them to which the agreement relates;

(b) the circumstances in which the representative's payment, expenses and costs, or part of them, are payable; and

(c) the reason for setting the amount of the payment at the level agreed, which, in an employment matter, shall include having regard to, where appropriate, whether the claim or proceedings is one of several similar claims or proceedings.

Payment in respect of claims or proceedings other than an employment matter

4.—(1) In respect of any claim or proceedings, other than an employment matter, to which these Regulations apply, a damages-based agreement must not require an amount to be paid by the client other than—

(a) the payment, net of—

(**5**) 1974 c.47. Section 57 has been amended by section 98 of the 1990 Act and sections 117 and 221 of, and Schedule 16 to, the Legal Services Act 2007 (c.29).
(**6**) S.I. 2010/1206.

(i) any costs (including fixed costs under Part 45 of the Civil Procedure Rules 1998); and

(ii) where relevant, any sum in respect of disbursements incurred by the representative in respect of counsel's fees,

that have been paid or are payable by another party to the proceedings by agreement or order; and

(b) any expenses incurred by the representative, net of any amount which has been paid or is payable by another party to the proceedings by agreement or order.

(2) In a claim for personal injuries—

(a) the only sums recovered by the client from which the payment shall be met are—

(i) general damages for pain, suffering and loss of amenity; and

(ii) 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; and

(b) subject to paragraph (4), a damages-based agreement must not provide for a payment above an amount which, including VAT, is equal to 25% of the combined sums in paragraph (2)(a)(i) and (ii) which are ultimately recovered by the client.

(3) Subject to paragraph (4), in any other claim or proceedings to which this regulation applies, a damages-based agreement must not provide for a payment above an amount which, including VAT, is equal to 50% of the sums ultimately recovered by the client.

(4) The amounts prescribed in paragraphs (2)(b) and (3) shall only apply to claims or proceedings at first instance.

Information required to be given before an agreement is made in an employment matter

5.—(1) In an employment matter, the requirements prescribed for the purposes of section 58AA(4)(d) of the Act are to provide—

(a) information to the client in writing about the matters in paragraph (2); and

(b) such further explanation, advice or other information about any of those matters as the client may request.

(2) Those matters are—

(a) the circumstances in which the client may seek a review of costs and expenses of the representative and the procedure for doing so;

(b) the dispute resolution service provided by the Advisory, Conciliation and Arbitration Service (ACAS) in regard to actual and potential claims;

(c) whether other methods of pursuing the claim or financing the proceedings, including—

(i) advice under the Community Legal Service,

(ii) legal expenses insurance,

(iii) pro bono representation, or

(iv) trade union representation,

are available, and, if so, how they apply to the client and the claim or proceedings in question; and

(d) the point at which expenses become payable; and

(e) a reasonable estimate of the amount that is likely to be spent upon expenses, inclusive of VAT.