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

2010 No.000

LEGAL SERVICES, ENGLAND AND WALES

The Damages-Based Agreements Regulations 2010

Made - - - -	**
Coming into force - -	*6th April 2010*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 58AA(4) of the Courts and Legal Services Act 1990(**a**).

He has consulted the designated judges, the General Council of the Bar and the Law Society in accordance with section 58AA(6) of that Act.

A draft of this instrument has been laid before and approved by both Houses of Parliament.

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Damages-Based Agreements Regulations 2010 and come into force on 6th April 2010.

(2) In these Regulations—

"the Act" means the Courts and Legal Services Act 1990;

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

"damages-based agreement" means a damages-based agreement within the meaning of section 58AA(3)(b) of the Act;

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

"payment" means a part of the sum recovered in respect of the claim or damages awarded that the client agrees to pay the representative and excludes expenses;

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

(**a**) 1990 c. 41. Section 58AA was inserted by section 154 of the Coroners and Justice Act 2009 c. 25.
(**b**) 2006 c. 29.

(3) These Regulations apply to all damages-based agreements signed on or after the date on which these Regulations come into force.

Agreement to comply with prescribed requirements

2. An agreement shall not be an enforceable damages-based agreement unless it complies with the requirements of regulations 3, 4, 5, 6 and 7.

Requirements of an agreement

3. A damages-based agreement must specify—

(a) the claim or proceedings or parts of them to which it 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, including having regard to, where appropriate, whether the claim or proceedings is one of several similar claims.

Information to be given before an agreement is made

4.—(1) Before a damages-based agreement is signed the representative must—

(a) inform the client, in writing, about the matters in paragraph (2); and

(b) provide 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 the costs and expenses of the representative and the procedure for doing so;

(b) information regarding 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;

(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.

Form of an agreement

5. A damages-based agreement, and any amendment to it to cover additional causes of action, must be in writing and signed by the client and the representative.

The payment

6. The amount of the payment, including VAT, must not exceed 35% of the sum recovered by the client in the claim or proceedings.

Termination of an agreement

7.—(1) If a damages-based agreement is terminated, the representative may charge the client no more than their costs and expenses for the work undertaken in respect of the client's claim or proceedings.

(2) The client may not terminate the agreement—

(a) after liability has been admitted;

(b) settlement has been agreed; or

(c) within seven days before the start of the tribunal hearing.

(3) The representative may not terminate the agreement and charge costs unless the client has behaved or is behaving unreasonably.

Signed by authority of the Lord Chancellor

Parliamentary Under Secretary of State
Ministry of Justice

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the requirements with which an agreement between a client and his or her representative must comply so as to enable it to be a damages-based agreement relating to an employment matter under section 58AA of the Courts and Legal Services Act 1990.

Regulation 2 states that an agreement is not enforceable unless it complies with regulations 3, 4, 5, 6 and 7.

Regulation 3 specifies the requirements of the agreement.

Regulation 4 specifies the information that must be given before an agreement can be made.

Regulation 5 specifies that an agreement must be in writing and signed by the client and the representative. It also specifies that additional causes of action can be added to the agreement by written and signed amendment.

Regulation 6 provides that the amount of the payment, including VAT, must not be greater than 35% of the sum recovered by the client.

Regulation 7 prevents the representative from ending the agreement unless the client has been or is being unreasonable. It also prevents the client from ending the agreement at particular stages. Finally, the regulation provides that if the agreement is ended then the representative cannot charge more than their costs and expenses for the work done in respect of the client's claim or proceedings. Regulation 1 defines "costs" as the total of the representative's time reasonably spent on the claim or proceedings multiplied by the representative's reasonable hourly rate of remuneration.

An impact assessment has been prepared for these Regulations and can be requested by writing to the Ministry of Justice Private Funding Branch at: privatefundingbranch@justice.gsi.gov.uk

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£4.00

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