



# Access to Justice Act 1999

## 1999 CHAPTER 22

### PART II

#### OTHER FUNDING OF LEGAL SERVICES

##### Modifications etc. (not altering text)

- C1** Pt. 2: functions of the Lord Chancellor transferred (19.8.2003) to the Secretary of State by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 4, [Sch. 1](#) (with art. 6)  
Pt. 2: functions of the Secretary of State transferred (12.1.2006) to the Lord Chancellor by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), [art. 3](#) (with arts. 4, 5)

#### *Conditional fee and litigation funding agreements*

### 27 Conditional fee agreements.

- (1) For section 58 of the <sup>M1</sup>Courts and Legal Services Act 1990 substitute—

#### **“58 Conditional fee agreements.**

- (1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to subsection (5)) any other conditional fee agreement shall be unenforceable.
- (2) For the purposes of this section and section 58A—
- (a) a conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances; and

*Status: This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Access to Justice Act 1999, Part II. (See end of Document for details)*

- (b) a conditional fee agreement provides for a success fee if it 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 payable only in specified circumstances.
- (3) The following conditions are applicable to every conditional fee agreement—
  - (a) it must be in writing;
  - (b) it must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement; and
  - (c) it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor.
- (4) The following further conditions are applicable to a conditional fee agreement which provides for a success fee—
  - (a) it must relate to proceedings of a description specified by order made by the Lord Chancellor;
  - (b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and
  - (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the Lord Chancellor.
- (5) If a conditional fee agreement is an agreement to which section 57 of the <sup>M2</sup>Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.

#### **58A Conditional fee agreements: supplementary.**

- (1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—
  - (a) criminal proceedings, apart from proceedings under section 82 of the <sup>M3</sup>Environmental Protection Act 1990; and
  - (b) family proceedings.
- (2) In subsection (1) “family proceedings” means proceedings under any one or more of the following—
  - (a) the <sup>M4</sup>Matrimonial Causes Act 1973;
  - (b) the <sup>M5</sup>Adoption Act 1976;
  - (c) the <sup>M6</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
  - (d) Part III of the <sup>M7</sup>Matrimonial and Family Proceedings Act 1984;
  - (e) Parts I, II and IV of the <sup>M8</sup>Children Act 1989;
  - (f) Part IV of the <sup>M9</sup>Family Law Act 1996; and
  - (g) the inherent jurisdiction of the High Court in relation to children.
- (3) The requirements which the Lord Chancellor may prescribe under section 58(3)(c)—
  - (a) include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made; and

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- (b) may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not).
  - (4) In section 58 and this section (and in the definitions of “advocacy services” and “litigation services” as they apply for their purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.
  - (5) Before making an order under section 58(4), the Lord Chancellor shall consult—
    - (a) the designated judges;
    - (b) the General Council of the Bar;
    - (c) the Law Society; and
    - (d) such other bodies as he considers appropriate.
  - (6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any fees payable under a conditional fee agreement which provides for a success fee.
  - (7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).”
- (2) In section 120(4) of the <sup>M10</sup>Courts and Legal Services Act 1990 (orders and regulations subject to affirmative procedure), for “58,” substitute “ 58(4), ”.

**Modifications etc. (not altering text)**

**C2** [S. 27](#) excluded (1.4.2000) by [S.I. 2000/900](#), [art. 2\(2\)](#)

**Marginal Citations**

**M1** [1990 c.41.](#)  
**M2** [1974 c.47.](#)  
**M3** [1990 c.43.](#)  
**M4** [1973 c.18.](#)  
**M5** [1976 c.36.](#)  
**M6** [1978 c.22.](#)  
**M7** [1984 c.42.](#)  
**M8** [1989 c.41.](#)  
**M9** [1996 c.27.](#)  
**M10** [1990 c.41.](#)

PROSPECTIVE

**28** **Litigation funding agreements.**

In the Courts and Legal Services Act 1990, after section 58A (inserted by section 27 above) insert—

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### **“58B Litigation funding agreements.**

- (1) A litigation funding agreement which satisfies all of the conditions applicable to it by virtue of this section shall not be unenforceable by reason only of its being a litigation funding agreement.
- (2) For the purposes of this section a litigation funding agreement is an agreement under which—
  - (a) a person (“the funder”) agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (“the litigant”); and
  - (b) the litigant agrees to pay a sum to the funder in specified circumstances.
- (3) The following conditions are applicable to a litigation funding agreement—
  - (a) the funder must be a person, or person of a description, prescribed by the [F1Lord Chancellor];
  - (b) the agreement must be in writing;
  - (c) the agreement must not relate to proceedings which by virtue of section 58A(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed by the [F1Lord Chancellor];
  - (d) the agreement must comply with such requirements (if any) as may be so prescribed;
  - (e) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates together with an amount calculated by reference to the funder’s anticipated expenditure in funding the provision of the services; and
  - (f) that amount must not exceed such percentage of that anticipated expenditure as may be prescribed by the [F1Lord Chancellor] in relation to proceedings of the description to which the agreement relates.
- (4) Regulations under subsection (3)(a) may require a person to be approved by the [F1Lord Chancellor] or by a prescribed person.
- (5) The requirements which the [F1Lord Chancellor] may prescribe under subsection (3)(d)—
  - (a) include requirements for the funder to have provided prescribed information to the litigant before the agreement is made; and
  - (b) may be different for different descriptions of litigation funding agreements.
- (6) In this section (and in the definitions of “advocacy services” and “litigation services” as they apply for its purposes) “proceedings” includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated.
- (7) Before making regulations under this section, the [F1Lord Chancellor] shall consult—
  - (a) the designated judges;
  - (b) the General Council of the Bar;

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- (c) the Law Society; and
- (d) such other bodies as he considers appropriate.

(8) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement.

(9) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement.”

#### Textual Amendments

- F1** Words in s. 28 substituted (12.1.2006) by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), art 8, **Sch. para. 4(b)**

### Costs

#### <sup>F2</sup>29 Recovery of insurance premiums by way of costs.

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#### Textual Amendments

- F2** S. 29 omitted (19.1.2013 for specified purposes, 1.4.2013 except in relation to specified proceedings, 6.4.2016 in so far as not already in force except in relation to proceedings relating to a claim for damages in respect of diffuse mesothelioma and publication and privacy proceedings) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 46(2)**, 151(1) (with **ss. 46(3)**, 48); [S.I. 2013/77](#), arts. 2(1)(c), 3(c) (with art. 4); [S.I. 2016/345](#), art. 2

#### <sup>F3</sup>30 Recovery where body undertakes to meet costs liabilities.

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#### Textual Amendments

- F3** S. 30 omitted (1.4.2013) by virtue of [Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(c. 10\)](#), **ss. 47(1)**, 151(1) (with s. 47(2)); [S.I. 2013/77](#), art. 3(d)

#### 31 Rules as to costs.

In section 51 of the [<sup>F4</sup>Senior Courts Act 1981](costs), in subsection (2) (rules regulating matters relating to costs), insert at the end “ or for securing that the amount awarded to a party in respect of the costs to be paid by him to such representatives is not limited to what would have been payable by him to them if he had not been awarded costs. ”

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#### Textual Amendments

- F4** S. 31: for the words "Supreme Court Act 1981" wherever they occur there is substituted (1.10.2009) the words "Senior Courts Act 1981" by virtue of [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59, 148, [Sch. 11 para. 1\(2\)](#); S.I. 2009/1604, [art. 2](#)

### *Legal aid in Scotland*

#### 32 Regulations about financial limits in certain proceedings.

In section 9(2) of the <sup>M11</sup>Legal Aid (Scotland) Act 1986 (application by regulations of Part II to assistance by way of representation), after paragraph (d) insert—

- “(dd) provide that assistance by way of representation shall be available in relation to such proceedings as may be prescribed, without reference to the financial limits under section 8 of this Act;
- (de) provide that section 11(2) of this Act shall not apply as respects assistance by way of representation received in relation to such proceedings as may be prescribed;”.

#### Marginal Citations

- M11** 1986 c.47.

#### 33 Recipients of disabled person’s tax credit.

**F5** .....

#### Textual Amendments

- F5** S. 33 repealed (6.4.2003) by [Tax Credits Act 2002 \(c. 21\)](#), ss. 60, 61, [Sch. 6](#); S.I. 2003/962, [art. 2\(1\)\(3\)\(e\)](#), [Sch. 1](#) (subject to [arts. 3, 4](#) and with [art. 5](#))

#### 34 References by Scottish Criminal Cases Review Commission.

In section 25(7) of the Legal Aid (Scotland) Act 1986 (legal aid in appeals), for “Secretary of State under section 124” substitute “ Scottish Criminal Cases Review Commission under section 194B ”.

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**Changes to legislation:**

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