



# Courts and Legal Services Act 1990

## 1990 CHAPTER 41

### PART II

#### LEGAL SERVICES

##### *Miscellaneous*

#### [<sup>F1</sup>58 <sup>F1</sup> 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
  - (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;

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- (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>M1</sup>Solicitors Act 1974 (non-contentious business agreements between solicitor and client) applies, subsection (1) shall not make it unenforceable.]

#### Textual Amendments

**F1** Ss. 58, 58A substituted (1.4.2000) for s. 58 by 1999 c. 22, s. 27(1) (with Sch. 14 para. 7(2)); S.I. 2000/774, art. 2(b) (with arts. 3-5)

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

**C1** S. 58(3)(c) extended (27.9.1999) by 1999 c. 22, ss. 105, 108(3), Sch. 14 Pt. III para. 11 (with Sch. 14 para. 7(2))

**C2** S. 58(4) extended (27.9.1999) by 1999 c.22, ss. 105, 108(3), Sch. 14 Pt. III para. 10 (with Sch. 14 para. 7(2))

#### Marginal Citations

**M1** 1974 c.47.

### <sup>F2</sup>58A Conditional fee agreements: supplementary.

- (1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—
- (a) criminal proceedings, a part from proceedings under section 82 of the <sup>M2</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>M3</sup>Matrimonial Causes Act 1973;
  - (b) the <sup>M4</sup>Adoption Act 1976;
  - (c) the <sup>M5</sup>Domestic Proceedings and Magistrates’ Courts Act 1978;
  - (d) Part III of the <sup>M6</sup>Matrimonial and Family Proceedings Act 1984;
  - (e) Parts I, II and IV of the <sup>M7</sup>Children Act 1989;
  - (f) Part IV of the <sup>M8</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
  - (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

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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).

#### Textual Amendments

**F2** Ss. 58, 58A substituted (1.4.2000) for s. 58 by 1999 c.22, s. 27(1) (with Sch. 14 para. 7(2)); S.I. 2000/774, art. 2(b) (with arts. 3-5)

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

**C3** S. 58A(6)(7) excluded (1.4.2000) by S.I. 2000/900, art. 2(1)(a)(b)

#### Marginal Citations

**M2** 1990 c.43.  
**M3** 1973 c.18.  
**M4** 1976 c.36.  
**M5** 1978 c.22.  
**M6** 1984 c.42.  
**M7** 1989 c.41.  
**M8** 1996 c.27.

VALID FROM 12/11/2009

#### <sup>F3</sup>58AA Damages-based agreements relating to employment matters

- (1) A damages-based agreement which relates to an employment matter and satisfies the conditions in subsection (4) is not unenforceable by reason only of its being a damages-based agreement.
- (2) But a damages-based agreement which relates to an employment matter and does not satisfy those conditions is unenforceable.
- (3) For the purposes of this section—
  - (a) a damages-based agreement is an agreement between a person providing advocacy services, litigation services or claims management services and the recipient of those services which provides that—
    - (i) the recipient is to make a payment to the person providing the services if the recipient obtains a specified financial benefit in

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- connection with the matter in relation to which the services are provided, and
- (ii) the amount of that payment is to be determined by reference to the amount of the financial benefit obtained;
- (b) a damages-based agreement relates to an employment matter if the matter in relation to which the services are provided is a matter that is, or could become, the subject of proceedings before an employment tribunal.
- (4) The agreement—
- (a) must be in writing;
  - (b) must not provide for a payment above a prescribed amount or for a payment above an amount calculated in a prescribed manner;
  - (c) must comply with such other requirements as to its terms and conditions as are prescribed; and
  - (d) must be made only after the person providing services under the agreement has provided prescribed information.
- (5) Regulations under subsection (4) are to be made by the Lord Chancellor and may make different provision in relation to different descriptions of agreements.
- (6) Before making regulations under subsection (4) the Lord Chancellor must consult—
- (a) the designated judges,
  - (b) the General Council of the Bar,
  - (c) the Law Society, and
  - (d) such other bodies as the Lord Chancellor considers appropriate.
- (7) In this section—
- “payment” includes a transfer of assets and any other transfer of money's worth (and the reference in subsection (4)(b) to a payment above a prescribed amount, or above an amount calculated in a prescribed manner, is to be construed accordingly);
- “claims management services” has the same meaning as in Part 2 of the Compensation Act 2006 (see section 4(2) of that Act).
- (8) Nothing in this section applies to an agreement entered into before the coming into force of the first regulations made under subsection (4).]

#### Textual Amendments

**F3** S. 58AA inserted (12.11.2009) by [Coroners and Justice Act 2009 \(c. 25\)](#), **ss. 154(2)**, 182(1)(e) (with s. 180, Sch. 22)

PROSPECTIVE

#### [<sup>F4</sup>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.

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- (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 Secretary of State;
  - (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 Secretary of State;
  - (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 Secretary of State 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 Secretary of State or by a prescribed person.
- (5) The requirements which the Secretary of State 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 Secretary of State 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.
- (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.]

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#### Textual Amendments

**F4** S. 58B inserted (prosp.) by 1999 c. 22, ss. 28, 108(1) (with Sch. 14 para. 7(2))

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

**C4** S. 58B: transfer of functions (12.1.2006) by [The Transfer of Functions \(Lord Chancellor and Secretary of State\) Order 2005 \(S.I. 2005/3429\)](#), [art. 3](#) (with arts. 4, 5)

### 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 <sup>M9</sup>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).

#### Commencement Information

**II** S. 59 wholly in force at 1. 4.1991 see [s. 124\(3\)](#) and [S.I. 1991/608](#), [art 2](#), [Sch.](#)

#### Marginal Citations

**M9** 1988 c. 34.

### 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;

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- (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.

VALID FROM 01/01/2010

**[<sup>F5</sup>60A Procedural requirements relating to recommendations for the purposes of section 60**

- (1) Before making a recommendation under this section, the Legal Services Board must publish a draft of—
  - (a) the proposed recommendation, and
  - (b) the proposed draft regulations.
- (2) The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period.
- (3) Before making the recommendation, the Board must have regard to any representations duly made.
- (4) If the draft regulations to be annexed to the recommendation differ from the draft regulations published under subsection (1)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft recommendations along with a statement detailing the changes made and the reasons for the changes.]

**Textual Amendments**

- F5** S. 60A inserted (1.1.2010) by [Legal Services Act 2007 \(c. 29\)](#), ss. 208, 211, [Sch. 21 para. 90](#) (with ss. 29, 192, 193); [S.I. 2009/3250](#), [art. 2\(h\)](#) (with art. 9)

**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.

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- (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 <sup>M10</sup>Solicitors Act 1974 (unqualified person not to prepare probate papers etc.) does not apply.

### **Commencement Information**

**I2** S. 63 partly in force; s. 63 not in force at Royal Assent see s. 124; s. 63(1)(a)(2) in force 1. 4. 1991 see s. 124(3) and S.I. 1991/608, **art. 2**

### **Marginal Citations**

**M10** 1974 c. 47.

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

- (1) The following shall be inserted in the <sup>M11</sup>Sex Discrimination Act 1975 after section 35—



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## *“ 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.
  - (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 <sup>M12</sup>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—

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- (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.”

#### Marginal Citations

M11 1975 c. 65.

M12 1976 c. 74.

## 65 Discrimination by, or in relation to, advocates.

- (1) The following shall be inserted in the <sup>M13</sup>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—
- (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.

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- (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 <sup>M14</sup>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
  - (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.”

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#### Marginal Citations

**M13** 1975 c. 65.

**M14** 1976 c. 74.

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

- (1) Section 39 of the <sup>M15</sup>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 <sup>M16</sup>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.

#### Marginal Citations

**M15** 1974 c. 47.

**M16** 1801 c. 79.

<sup>F6</sup>67 .....

#### Textual Amendments

**F6** S. 67 repealed (31.7.2000) by 1999 c.22, s. 106, **Sch. 15 Pt. II** (with Sch. 14 paras. 7(2), 36(9)); S.I. 2000/1920, **art. 2(c)**

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

- (1) Section 22 of the <sup>M17</sup>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;

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*Status: Point in time view as at 31/07/2000. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: Courts and Legal Services Act 1990, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 19 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (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.”

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**Marginal Citations**

**M17** 1974 c. 47

**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.

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**Commencement Information**

**I3** S. 69 wholly in force at 1.4.1991 see s. 124(3) and S.I. 1991/608, art. 2, [Sch.](#)

**Status:**

Point in time view as at 31/07/2000. This version of this cross heading contains provisions that are not valid for this point in time.

**Changes to legislation:**

Courts and Legal Services Act 1990, Cross Heading: Miscellaneous is up to date with all changes known to be in force on or before 19 July 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.