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DRAFT STATUTORY INSTRUMENTS

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**2002 No.**

**Access to Justice (Northern Ireland) Order 2002**

**PART III**

**OTHER FUNDING OF LEGAL SERVICES**

*Conditional fee and litigation funding agreements*

**Conditional fee agreements**

**39.**—(1) A conditional fee agreement which satisfies all of the conditions applicable to it by virtue of this Article shall not be unenforceable by reason only of its being a conditional fee agreement; but (subject to paragraph (5)) any other conditional fee agreement shall be unenforceable.

(2) For the purposes of this Article and Article 40—

- (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.

(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 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 Article 71A of the Solicitors (Northern Ireland) Order 1976(1) (non-contentious business agreements between solicitor and client) applies, paragraph (1) shall not make it unenforceable.

