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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

**Access to Justice (Northern Ireland) Order 2003**

**PART III**

**OTHER FUNDING OF LEGAL SERVICES**

*Conditional fee and litigation funding agreements*

**Conditional fee agreements: supplementary**

**39.**—(1) The proceedings which cannot be the subject of an enforceable conditional fee agreement are—

- (a) criminal proceedings; and
- (b) family proceedings.

(2) In paragraph (1) “family proceedings” means proceedings under any one or more of the following—

- (a) the Matrimonial Causes (Northern Ireland) Order 1978(1);
- (b) the Domestic Proceedings (Northern Ireland) Order 1980(2);
- (c) the Adoption (Northern Ireland) Order 1987(3);
- (d) Part IV of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989(4);
- (e) Parts II, III, V and XV of the Children (Northern Ireland) Order 1995(5);
- (f) the Family Homes and Domestic Violence (Northern Ireland) Order 1998(6),

and the inherent jurisdiction of the High Court in relation to children.

(3) The Lord Chancellor may by regulations amend paragraph (1) or (2) by adding proceedings or omitting or varying any proceedings; and regulations under this paragraph may, in particular, describe the proceedings which cannot be the subject of an enforceable conditional fee agreement by reference to the court or tribunal before which proceedings are to take place, or the issues involved.

(4) The requirements which the Lord Chancellor may prescribe under Article 38(2)(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).

(5) Before making an order under Article 38(3), the Lord Chancellor—

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(1) 1978 N.I. 15.  
(2) 1980 N.I. 5.  
(3) 1987 N.I. 22.  
(4) 1989 N.I. 4.  
(5) 1995 N.I. 2.  
(6) 1998 N.I. 6.

- (a) shall consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland, and
  - (b) may undertake such other consultation as appears to him to be 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 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).