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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*

**Litigation funding agreements**

**40.**—(1) A litigation funding 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 litigation funding agreement.

(2) The following conditions are applicable to a litigation funding agreement—

- (a) the funder must be a prescribed person or a person of a prescribed description;
- (b) the agreement must be in writing;
- (c) the agreement must not relate to proceedings which by virtue of Article 39(1) and (2) cannot be the subject of an enforceable conditional fee agreement or to proceedings of any such description as may be prescribed;
- (d) the agreement must comply with such requirements (if any) as may be prescribed;
- (e) any fee payable on the making of the agreement must not exceed such amount as may be prescribed;
- (f) 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—
  - (i) in prescribed circumstances, by reference to the funder's anticipated expenditure in funding the provision of the services; and
  - (ii) in prescribed circumstances, by reference to any damages recovered by the litigant in the proceedings; and
- (g) the amount calculated in accordance with sub-paragraph (f)(i) or (ii) must not exceed such limit (whether expressed as a figure, as a percentage of the anticipated expenditure or damages mentioned in that sub-paragraph, or otherwise) as may be prescribed in relation to proceedings of the description to which the agreement relates.

(3) Regulations under paragraph (2)(a) may require a person to be approved by the Lord Chancellor or by a prescribed person.

(4) The requirements which may be prescribed under paragraph (2)(d) include requirements for the funder to have provided prescribed information to the litigant before the agreement is made.

(5) Before making regulations under this Article, the Lord Chancellor—

- (a) shall consult the Lord Chief Justice, the Law Society and the General Council of the Bar of Northern Ireland, and

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**Draft Legislation:** This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 435

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(b) may undertake such other consultation as appears to him to be appropriate.