

THE LEGAL AID ACT 1986

THE DUTY ADVOCATE SCHEME 1997

Coming into operation 1st May 1997

In exercise of the powers conferred on the Legal Aid Committee, with the concurrence of the Treasury, by section 21 of the Legal Aid Act 1986, and of all other enabling powers, the following Scheme is hereby made:-

Citation, commencement and interpretation

1. (1) This Scheme may be cited as the Duty Advocate Scheme 1997 and shall come into operation on the 1st May 1997.

(2) In this Scheme -

“the Act” means the Legal Aid Act 1986;

“advice” and “representation” mean advice in relation to, and representation in, proceedings to which this Scheme applies;

“client” means a party to proceedings to which this Scheme applies, who is seeking or receiving advice or representation or on whose behalf advice or representation is sought;

“the Committee” means the Legal Aid Committee;

“duty advocate” means an advocate designated by the Committee who attends a court of summary jurisdiction in accordance with arrangements made under paragraph 3(1).

(a) 1986 c.23

Proceedings to which scheme applies

2. (1) Subject to sub-paragraph (2), this Scheme applies to proceedings before any court of summary jurisdiction, being proceedings specified in the Schedule.

(2) This Scheme does not apply to proceedings in relation to which -

(a) a legal aid certificate under Part II of the Act is for the time being in force in respect of the client, or

(b) advice and assistance under Part I of the Act is being given to the client.

Arrangements for advice and representation

3. (1) The Isle of Man Law Society shall, subject to the approval of the Committee, make arrangements for -

- (a) the attendance by advocates designated by the Committee at courts of summary jurisdiction; and
 - (b) the provision of advice and representation by such advocates at such courts in relation to proceedings to which this Scheme applies.
- (2) Advice and representation pursuant to arrangements under this paragraph shall be available without reference to the client's financial resources.
- (3) Arrangements under this paragraph shall include guidance to duty advocates to ensure that clients are given appropriate advice on obtaining advice and assistance under Part I of the Act, or legal aid under Part II of the Act, or both.

Remuneration of duty advocates

4. (1) A duty advocate shall submit to the Chief Registrar particulars, in such form as the Chief Registrar may require, of each attendance at a court of summary jurisdiction pursuant to arrangements under paragraph 3(1), which shall include details of -
- (a) the court attended and the time and place at which it was held;
 - (c) each case in which advice has been given, and the time taken;
 - (d) each case in which representation has been given, and the appearance time;
 - (e) letters written and telephone calls made and received.

Where the duty advocate is scheduled to attend a court and notice is given outside normal office hours the day prior to that specific court, that attendance is not required, upon application, a payment equivalent to 1 hour at the appropriate rate shall be made to the advocate.

- (2) Subject to sub-paragraph (3), the Chief Registrar shall assess the charges payable to the duty advocate in accordance with sub-paragraph (4) and request the Treasury to pay the charges as assessed to the advocate.
- (3) If the Chief Registrar considers that any advice or representation given by a duty advocate ought to have been given by way of advice and assistance under Part I of the Act, or by way of legal aid under Part II of the Act, he may refer the matter to the Committee, who may give the Chief Registrar such directions as it thinks fit to the assessment of the charges.
- (4) Unless the Chief Registrar, otherwise determines in the special circumstances of any case, the remuneration of duty advocates under this Schemes shall be at the rates for the time being prescribed under section 19(3) (criminal legal aid) of the Act.

Revocation

5. The Duty Advocate Scheme 1992(b) and the Duty Advocate (Amendment) Scheme 1995(c) are revoked.

(b) GC 489/92 (c) SD 252/95 (d) 1989 c.15
Paragraph 2(1).

SCHEDULE

PROCEEDINGS TO WHICH THIS SCHEME APPLIES

1. An inquiry under section 5 of the Summary Jurisdiction Act 1989(d), where all the evidence is adduced by written statements in accordance with section 70(4) of that Act.
2. An application for bail.
3. The following proceedings preliminary or subsequent to the trial for an offence -
 - (a) an appearance at which the accused is remanded or further remanded pending trial;
 - (b) an appearance for sentence following conviction.
4. The trial for an offence, where the client wishes the case to be concluded at that appearance, unless the duty advocate considers that the case should be adjourned in the interests of justice or of the client.
5. Proceedings arising from a failure to pay a fine or other sum ordered to be paid on a conviction, or to obey any other order of the court made on a conviction, where such failure may lead to the client being committed to custody.
6. Proceedings under section 87(1) (binding over) of the Summary Jurisdiction Act 1989 in respect of an actual or apprehended breach of the peace or other misbehaviour.
7. Proceedings arising from a failure to comply with a condition of a recognizance to keep the peace or to be of good behaviour.

MADE 13th March 1997

EXPLANATORY NOTE

(This note is not part of the Scheme.)

This Scheme provides for the attendance of duty advocates at courts of summary jurisdiction to give advice and representation in certain proceedings, and for their remuneration. It replaces the Duty Advocate Scheme 1992 as amended, and transfers the functions of the certifying officers under that scheme to the Chief Registrar.

