

THE LEGAL AID ACT 1986

THE LEGAL ADVICE AND ASSISTANCE REGULATIONS 1997

*Approved by Tynwald*

*15th April 1997*

*Coming into operation*

*1st May 1997*

In exercise of the powers conferred on the Legal Aid Committee by sections 7 to 12 and 16 of the Legal Aid Act 1986<sup>a</sup>, and of all other enabling powers, the following Regulations are hereby made.

**Citation and commencement**

1. These Regulations may be cited as the Legal Advice and Assistance Regulations 1997 and, subject to section 24 of the Act, shall come into operation on the 1st May 1997.

**Interpretation**

2. In these Regulations -

“the Act” means the Legal Aid Act 1986;

“advice” and “assistance” mean respectively advice and assistance under Part I of the Act;

“assessed deficiency” means the amount by which the sum allowed to the advocate by the Chief Registrar in assessing his bill under regulation 15 as being fair and reasonable remuneration for the work necessarily and reasonably done exceeds any contributions payable by the client to the advocate under section 10 of the Act together with the value of any charge arising under section 11 of the Act;

“certifying officer” has the same meaning as in the Legal Aid (General) Regulations 1997<sup>b</sup>;

“child” means a person under the age of 16 years;

“client” means a person seeking or receiving advice and assistance or on whose behalf advice and assistance is sought;

“the Committee” means the Legal Aid Committee;

“co-habitee” means one of two persons living together as spouses, and for this purpose, two persons of the same gender are to be treated as living together as spouses, if (and only if) they would be so treated were they of different genders.

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<sup>a</sup> 1986 c.23

<sup>b</sup> SD

“dependant” means a person whose circumstances render ~~them~~ financially dependant upon another for support.

“extension” means the grant of prior authority to exceed ~~the~~ prescribed limit for the purposes of section 9(1) of the Act and, where appropriate, the grant of prior authority to exceed any further limit under regulation 13(2) or (4);

“legal aid” means legal aid under Part I of the Act;

“matrimonial proceedings” means proceedings for a decree of divorce or judicial separation;

“patient” means a person who by reason of mental disorder within the meaning of the Mental Health Act 1998<sup>c</sup> is incapable of managing and administering his property and affairs;

“spouse” means a married person or co-habittee.

### **Applications for advice and assistance**

3. (1) An application for advice and assistance shall be made by a client in person to the advocate from whom the advice and assistance is sought, except where regulation 4 or 7 applies.

(2) The client shall furnish the advocate with the information necessary to enable the advocate to determine his financial resources or, where appropriate, whether he is in receipt of supplementary benefit or family income supplement.

(3) The information required by this regulation shall be furnished on a form approved by the Committee.

### **Attendance on behalf of client**

4. (1) Where a client cannot for good reason attend upon the advocate in order to apply for advice and assistance he may authorise another person to attend on his behalf.

(2) The person so authorised shall furnish the advocate with the information necessary to enable the advocate to determine the client’s financial resources or, where appropriate, whether the client is in receipt of supplementary benefit or family income supplement.

(3) The information required by this regulation shall be furnished on a form approved by the Committee.

### **Determination of financial resources and maximum contribution**

5. (1) The advocate to whom an application for advice and assistance is made shall determine the financial resources of the client and, where appropriate, of any person whose

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<sup>c</sup> 1974 c.34

resources may be treated as those of the client in accordance with section 12(4) of the Act of paragraph 5 of Schedule 1.

(1A) The financial eligibility of the person concerned shall be assessed pursuant to the method used to assess means by the Department of Health and Social Security for Family Income Supplement '(FIS)'

(2) Where the advocate is satisfied that any of the persons whose financial resources are to be determined under paragraph (1) is in receipt of an Isle of Man income-related benefit, he shall not determine that person's financial resources.

(3) The advocate shall also determine the maximum contribution, if any, payable to him by the client under section 10(2) of the Act in accordance with Schedule 2 and the advocate shall collect the contribution from the client.

(4) The advocate shall not give advice and assistance to any person until either the form referred to in regulation 3(3) has been signed by the client or, where appropriate, the form referred to in regulation 4(3) has been signed on behalf of the client, and in any case until the advocate has determined the matters referred to in paragraphs (1) and (3).

### **Children and patients**

6. (1) An advocate shall not accept an application for advice and assistance from a child unless he has been authorised to do so by the certifying officer, who shall withhold such authority unless he is satisfied that it is reasonable in the circumstances that the child should receive advice and assistance.

(2) An advocate may accept an application for advice and assistance on behalf of a child or patient from -

- (a) in the case of a child, his parent, guardian or other person in whose care he is;
- (b) in the case of a patient, his spouse, or receiver appointed under Part VII of the Mental Health Act 1998 or nearest relative or guardian within the meaning of Part IV of that Act;
- (c) in the case of a child or a patient, a person acting for the purposes of any proceedings as his next friend or guardian *ad litem*;
- (d) in the case of a child or patient, any other person where the certifying officer is satisfied that it is reasonable in the circumstances and has given prior authority for the advice and assistance to be given to such other person on behalf of the child or patient.

### **Other special cases**

7. (1) Where the client resides outside the Island the Certifying Officer may give the advocate prior authority to accept a postal application for advice and assistance if he is satisfied that it is reasonable in the circumstances to do so.

(2) A person shall not be given advice and assistance for the same matter by more than one advocate without the prior authority of the Certifying Officer, and such authority may be given on such terms and conditions as the Certifying Officer may in his discretion see fit to impose.

### **Excepted matters**

8. A person shall not be given advice and assistance in relation to the conduct of a transaction consisting wholly or mainly of the creation, acquisition, disposal or mortgage of an interest in land, other than the acquisition of an interest, being a term of not more than 5 years or a tenancy from year to year or for any less period, in a dwelling occupied or to be occupied by that person.

### **Separate matters**

9. Where more than one separate matter is involved each matter shall be the subject of a separate application, except that matters connected with or arising from matrimonial proceedings, whether actual or prospective, between the client and his spouse shall not be treated as separate matters for the purpose of advice and assistance.

### **Refusal of advice and assistance**

10. An advocate shall be entitled for reasonable cause either to refuse to accept an application for advice and assistance or (having accepted an application) to decline to give advice and assistance, and may, if he thinks fit, refuse to disclose his reasons for doing so to the client or person seeking advice and assistance on his behalf; but he shall give the Chief Registrar such information about such a refusal as he may require for the purpose of performing his functions under these Regulations.

### **Power to require information**

11. The certifying officer or the Chief Registrar may require an advocate who has given advice and assistance to furnish such information as he may from time to time require for the purpose of performing his functions under these Regulations, and the advocate shall not be precluded, by reason of any privilege arising out of the relationship between advocate and client, from disclosing such information to the certifying officer or the Chief Registrar, as the case may be.

### **Entrusting functions to others**

12. Nothing in these Regulations prevents an advocate from entrusting any functions under these Regulations to a partner of his or to a competent and responsible representative of his employed in his office or otherwise under his immediate supervision.

### **Extensions**

13. (1) Subject to paragraph (2), where it appears to the advocate that the cost of giving advice and assistance is likely to exceed the limit prescribed for the purposes of section 9(1) of the Act, he shall apply to the Certifying Officer for an extension and shall furnish to the Certifying Officer such information as will enable him to consider and determine that application.

(1A) No application for an extension will be granted for more than 6 hours work in addition to the limits prescribed at Schedule 2(2).

(2) No extension shall be required under paragraph (1) if the advice and assistance relates to matters of such a kind, and its costs will not exceed such an amount, as may be specified in any notice given by the Committee that it approves the said limit being exceeded in the classes of case mentioned in the notice.

(3) Where the Certifying Officer receives an application in accordance with paragraph (1) he shall consider -

- (a) whether it is reasonable for the advice and assistance to be given; and
- (b) whether the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable.

(4) If the Certifying Officer is satisfied that it is reasonable for the advice and assistance to be given and that the estimated amount of the costs to be incurred in giving advice and assistance is fair and reasonable, he shall grant an extension and shall prescribe such higher limit as he thinks fit and may limit the advice and assistance to such subject matter as he thinks fit.

(5) Upon receipt of notification of a refusal to extend, an applicant may seek review of such decision by a certifying officer.

#### **Collection and refund of contributions**

14. (1) Where a client is required to make a contribution in respect of the cost of advice and assistance, the advocate may collect that contribution in such instalments as may be agreed between him and the client, and where the total contribution is likely to exceed the cost of giving advice and assistance, he shall not require the client to pay a sum higher than would be expected to defray his costs.

(2) Where the charges or fees properly chargeable for the advice and assistance are less than any contribution made by the client, the advocate shall refund the balance.

#### **Charges or fees payable by the Treasury**

15. (1) Where the charges or fees properly chargeable for the advice and assistance, including charges for disbursements, exceed any contribution payable by the client to the advocate under section 10 of the Act together with the value of any charge arising under section 11 of the Act, the advocate shall submit a bill to the Chief Registrar requesting payment of the deficiency.

(2) The Chief Registrar shall assess the bill and request the Treasury to pay the assessed deficiency, if any, to the advocate.

(3) If any advocate is dissatisfied with any decision of the Chief Registrar as to the payment of a deficiency in his charges or fees for advice and assistance he may within 21 days of the date of the written notification to him make written representations to the Certifying Officer, who shall review the assessment of the Chief Registrar, and shall allow such amount as appears to it to constitute fair and reasonable remuneration for work necessarily and reasonably done in connection with the matter on which the advice and assistance was sought, whether by confirming, increasing or decreasing the amount assessed by the Chief Registrar.

(4) The hourly rates payable are those prescribed by the Treasury pursuant to section 19(3) of the Legal Aid Act 1986.

#### **False statements etc.**

16. Where a client has wilfully failed to comply with the provision of these Regulations as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation, and after the failure occurred or the false statement or representation was made the client received advice and assistance, the Committee or Certifying Officer may declare that the advice and assistance so given was not given under the Act and these Regulations, and if it does so, it shall inform the client and the advocate; and thereafter the Treasury shall be entitled to recover from the client any sums paid by it in respect of the advice and assistance so given.

#### **Financial limits**

17. Schedule 2 shall have effect for prescribing amounts for the purposes of sections 7(a), 9(1) and 10(2) of the Act.

#### **Revocations**

18. The regulations specified in Schedule 3 are revoked.

#### **Transitional provision**

19. Nothing in these Regulations applies in relation to an application for advice and assistance made before the coming into operation of these Regulations.

SCHEDULE 1

ASSESSMENT OF RESOURCES

*Interpretation*

1. In this Schedule, -

“capital” means the amount or value of every resource of a capital nature;

“income” means the total income from all sources which the person concerned received or became entitled to during or in respect of the 7 days up to and including the date of his application for advice or assistance and in the case of applying for an extension under regulation 13(1), the 7 days up to and including the date of that extension application;

“the person concerned” means the person whose disposable capital and disposable income are to be determined.

*Determination of questions*

2. Any question arising under this Schedule shall be decided by the advocate to whom the client has applied and that advocate, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Committee, the Chief Registrar or the Certifying Officer as to the application of this Schedule.

*Calculation of resources generally*

5. The resources of any person who -

(a) under section 17 of the Supplementary Benefits Act 1976(d) (an Act of Parliament), as it has effect in the Island(e) is liable to maintain a child, or

(b) who usually contributes substantially to a child’s maintenance, or

(c) who has care and control of the child, not being a person who has such care and control by reason of any contract or for some temporary purpose,

may be treated as the resources of the child, if, having regard to all the circumstances, including the age and resources of the child and to any conflict of interest it appears just and equitable to do so.

6. If it appears to the advocate that the person concerned, with intent to reduce his capital or income or the maximum contribution, has -

(a) directly or indirectly deprived himself of any resource or

- (b) converted any part of his resources which are wholly or partly to be left out of account, the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted, as the case may be.
7. 1) In computing the capital and income of the person concerned –
- (a) there shall be left out of account the value of the subject matter of any claim in respect of which he is seeking advice or assistance;
  - (b) the resources of any spouse of his shall be treated as his resources unless—
    - (i) the spouse has a contrary interest in the matter in respect of which he is seeking advice and assistance,
    - (ii) the person concerned and his spouse are living separate and apart, or
    - (iii) in all the circumstances of the case it would be inequitable or impracticable to do so.”.
  - (2) For the purposes of sub-paragraph (1)(a), the value of the claim shall be apportioned equally between the parties save that in exceptional circumstances it may be determined, on application, by the certifying officer up to a maximum of £100,000 or, in the case of a matter mentioned in paragraph 8(a), £250,000.
8. In computing the capital of the person concerned -
- (a) there shall be left out of account the value of the main or only dwelling in which he resides (in either case up to a maximum sum of £250,000) and the value of his household furniture and effects, of articles of personal clothing and of the tools and implements of his trade;
  - (b) where the person concerned resides in more than one dwelling in which he has an interest there shall be taken into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof.
13. Where it appears to the advocate that there has been some error or mistake in the determination of the income, capital or maximum contribution of the person concerned, he may re-determine the income or capital or maximum contribution or, as the case may be, amend the determination and in the latter case the amended determination shall for all purposes be substituted for the original determination.



SCHEDULE 2

FINANCIAL LIMITS

*Financial resources of client*

1. Subject to section 7(b) of the Act, a person shall not be entitled to advice and assistance under Part I of the Act if his income resources exceeds the maximum net resources sum identified in the table at paragraph 3(2).

*Maximum prospective cost*

2. The limit of cost of advice or assistance for the purpose of section 9(1) of the Act is -
- (a) where the advice or assistance relates to a petition or intended petition for a decree of divorce or judicial separation, a sum equivalent to 4 hours of work;
  - (b) otherwise, a sum equivalent to 3 hours of work;

*Contributions*

3. (1) No contribution shall be payable by a person under section 10(2) of the Act if his income (determined in accordance with Schedule 1, including paragraph 8 thereof) does not exceed the limits prescribed by reference to the assessment referred to at regulation 5(1)(a).

(2) The contribution payable by a person under section 10(2) of the Act, where his income (determined as aforesaid) exceeds an amount specified in column 1 of the following table but does not exceed the corresponding amount specified in column 2, is the corresponding amount specified in column 3 -

Net Resources (above FIS limit) (Minimum) £	Net Resources (above FIS limit) (Maximum) £	Contribution £
1	10	5
11	20	10
21	40	20
41	80	40

Regulation 18.

SCHEDULE 3

REGULATIONS REVOKED

Reference	Title
GC 223/86	The Legal Advice and Assistance Regulations 1986.
GC 325/89	The Legal Advice and Assistance (Amendment) Regulations 1989.
GC 382/91	The Legal Advice and Assistance (Amendment) Regulations 1991.
SD 253/95	The Legal Advice and Assistance (Amendment) Regulations 1995.

MADE 13th March 1997

(signed by)

Members of the Legal Aid Committee

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EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations prescribe the conditions under which, and the procedure in accordance with which, legal advice and assistance may be given by advocates in accordance with Part I of the Legal Aid Act 1986. They revoke and replace the Legal Advice and Assistance Regulations 1986 as amended.