

Statutory Document No. XX/20XX



*Legal Aid Act 1986*

## **LEGAL AID (GENERAL)(AMENDMENT) REGULATIONS 2014**

*Approved by Tynwald:*

*Coming into Operation:*

2014

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The Legal Aid Committee makes the following Regulations under sections 16, 23A, 24 and 27 of the Legal Aid Act 1986.

### **1 Title**

These Regulations are the Legal Aid (General)(Amendment) Regulations 2014.

### **2 Commencement**

If approved by Tynwald, these Regulations come into operation —

- (a) on the day after they are so approved, for the purpose of the exercise by the Legal Aid Committee of any function under regulation 2(1) to (3) (as amended by these Regulations);
- (b) on 2014, for all other purposes.

### **3 Interpretation**

Any reference in these Regulations to a numbered regulation is to the provision so numbered of the Legal Aid (General) Regulations 1997<sup>1</sup>.

### **4 Legal Aid Certifying Officer**

- (1) For regulation 1(2) substitute —

""certifying officer" means the person appointed Legal Aid Certifying Officer under regulation 2(1), and includes a Deputy Legal Aid Certifying Officer appointed under regulation 2(2);".

- (2) For regulation 2(1) to (3) substitute —

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<sup>1</sup> SD 144/97

- "(1) Subject to paragraph (3), the Committee shall appoint a Legal Aid Certifying Officer who shall discharge all the functions conferred upon the certifying officer by these Regulations and any other regulations made under the Act.
- (2) Subject to paragraph (3), the Committee may appoint a Deputy Legal Aid Certifying Officer to act in the place of the Legal Aid Certifying Officer, who may exercise on behalf of the certifying officer any of the functions conferred on the certifying officer by any regulations under the Act.
- (3) A person appointed under paragraph (1) or (2) shall —
- (a) be an advocate, a barrister or solicitor of at least 7 years standing but shall not be a practising advocate, barrister or solicitor;
  - (b) be paid such salary, fees, allowances and expenses as the Committee, with the consent of the Treasury, shall determine;
  - (c) hold office upon such other terms and conditions as the Committee shall determine; and
  - (d) subject to the Act and any regulations under it, act in accordance with such general directions as the Committee may give."

## 5 Applications for legal aid

In regulation 4, after paragraph (3) insert —

"(3A) Except in the case of an inquest, every application shall state —

- (a) the name and address of every other party to the proceedings, and
- (b) the name and address of the advocate (if any, and if known to the applicant) acting for each such party.

(3B) In paragraph (3A), and in any other provision of these Regulations referring to that paragraph, "party" includes, where proceedings have not started, a person who would be a party to proceedings if they had started."

## 6 Legal aid certificates

(1) In regulation 7, at the end insert —

"(9) When the certifying officer sends a legal aid certificate to the advocate for the applicant under paragraph (4) or (7), he shall also —

- (a) send a copy to every party referred to in regulation 4(3A)(a) and to every advocate referred to in regulation 4(3A)(b); and
- (b) notify each such party and advocate of the party's right to appeal to the Tribunal under regulation 11."

(2) After regulation 7 insert —

**"7A. Refusal of legal aid certificate**

If the certifying officer refuses an application for a legal aid certificate, he shall —

- (a) notify the applicant and his advocate of his decision in writing, stating the grounds on which he has refused the application, and
- (b) inform the applicant of his right to appeal to the Tribunal under regulation 11."

(3) In regulation 10(4), for "6 and 7" substitute "6, 7 and 7A".

(4) In regulation 17, after paragraph (2) insert —

"(2A) Paragraph (2) does not require a notice to be served on a party to whom or to whose advocate a copy of the legal aid certificate has been sent under regulation 7(9)(a)."

## **7 Appeals to Tribunal**

(1) In regulation 1(2), at the end insert —

"the Tribunal" means the Legal Aid Appeals Tribunal."

(2) For regulation 11 substitute —

**"11. Appeals to Tribunal**

- (1) Where the certifying officer refuses an application for a legal aid certificate or for the amendment of a legal aid certificate, the applicant may appeal to the Tribunal.
- (2) No appeal shall lie from a refusal based upon any determination by the Chief Registrar as to —
  - (a) the financial resources of the applicant (except in the case of Privy Council proceedings); or
  - (b) the maximum amount of contribution, or the method by which it is to be paid.
- (3) Where the certifying officer grants an application for a legal aid certificate or for the amendment of a legal aid certificate, any party referred to in regulation 4(3A)(a) may appeal to the Tribunal.

- (4) Any decision of the Tribunal on an appeal shall be final."
- (3) For regulation 12(9) substitute —
- "(9) The assisted person may appeal to the Tribunal against the revocation or discharge of a legal aid certificate under paragraph (6); and any decision of the Tribunal on the appeal shall be final."
- (4) In regulation 12(12), at the end insert "; and a notice of discharge or revocation under paragraph (6) shall include a statement of the assisted person's right to appeal to the Tribunal under paragraph (9)."

## 8 Time-limited certificates

In regulation 8, at the end insert —

"(9) A legal aid certificate may be —

- (a) issued or amended for a limited period specified in the certificate or amended certificate; or
- (b) limited as to the time to be spent by the assisted person's advocate on the proceedings to which the certificate relates;

and such a certificate, unless extended by the certifying officer, shall be treated as discharged on the expiration of that period or that time."

## 9 Mediation

- (1) After regulation 13 insert —

### "13A. Mediation

- (1) Subject to paragraphs (2) and (3), these Regulations apply with any necessary modifications to an application for legal aid for mediation in relation to any matter.
- (2) If, when a legal aid certificate (a "mediation certificate") is issued on such an application, a legal aid certificate has previously been issued to the assisted person for proceedings relating to that matter and has not been discharged or revoked, then, until the mediation certificate is discharged or revoked, —
  - (a) the earlier certificate shall be suspended; and
  - (b) during the suspension no further steps shall be taken in the proceedings without the consent of the certifying officer.
- (3) If paragraph (2) does not apply, no legal aid certificate shall be issued to the assisted person for proceedings relating to the matter in

question until the mediation certificate has been discharged or revoked."

(2) For regulation 8(8) substitute —

"(8) Subject to regulation 13A, a legal aid certificate may be granted or amended to cover attempts to negotiate a settlement."

## 10 Duties of advocate

In regulation 15, at the end insert —

"(10) Where it appears to an assisted person's advocate that —

- (a) the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Treasury; or
- (b) it is unreasonable in the particular circumstances that the assisted person should continue to receive legal aid;

it shall be the duty of the advocate to report the circumstances to the certifying officer.

(11) Where —

- (a) a legal aid certificate has been issued in connection with any proceedings, and
- (b) at the conclusion of the proceedings it might reasonably be expected that the court would, on an application for the purpose, make an order for costs in favour of the assisted person,

it shall be the duty of the assisted person's advocate to make such an application."

## 11 Bills of costs

(1) After regulation 17 insert —

### "17A. Bills of costs

The advocate assigned to an assisted person shall submit to the Chief Registrar a bill of costs in the form and containing the particulars set out in the Schedule."

(2) Omit regulation 27.

(3) For the Schedule substitute —

"Regulation 17A.

SCHEDULE  
BILL OF COSTS

- (1) Title page, which must include —
  - (a) the full title of the proceedings;
  - (b) the full name of the assisted person;
  - (c) the full name and address of the nominated advocate;
  - (d) the name of the nominated advocate's firm and VAT registration number;
  - (e) date and reference of the legal aid certificate and any subsequent amendment certificates;
  - (f) extent of the legal aid certificate (including limitations);
  - (g) where appropriate, the date of the court order authorising legal aid assessment;
  - (h) where appropriate, details of any court order which requires the costs of the assisted person to be paid (in full or in part) by another party.
- (2) Summary page, which must include —
  - (a) the hourly rate or rates claimed;
  - (b) total claim for all work undertaken;
  - (c) disbursements (subject to VAT) — net claim
  - (d) VAT total
  - (e) disbursements (not subject to VAT)
  - (f) details of any payments received in advance of assessment

Where the bill covers 2 or more periods with different hourly rates, separate totals should be included for each period within the summary.
- (3) Chronological list, which must include a full list of all work done (including preparation time, appearance time and travelling and waiting time) between the date of the legal aid certificate and the date of the discharge or revocation of the certificate.

The list should comprise columns headed as follows:

Date

## Description of work done

Senior advocate, junior advocate, other person

each of the last columns being subdivided into 3 columns headed "C" (for the amount claimed), "D" (for the amount deducted on assessment) and "A" (for the net amount allowed).

For the purposes of this Schedule —

"appearance time" means time spent in conducting the case for the assisted person;

"junior advocate" means an advocate who has been in practice in the Island for less than 5 years;

"preparation time" means time spent in preparing to conduct the case for the assisted person and includes all conferences, consultations, views, attendances, visits, advice given, documents settled or perused and letters written and (in the case of conviction) time spent in advising the assisted person whether or not to appeal against conviction or sentence;

"senior advocate" means an advocate who has been in practice in the Island for not less than 5 years;

"travelling and waiting time" means reasonable time spent travelling or waiting in the course of representation, pursuant to any limitation prescribed by rules of court."

MADE

2014

Members of the Legal Aid Committee

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations amend the Legal Aid (General) Regulations 1997.

Regulation 4 makes new provision as to the title and conditions of service of the certifying officer.

Regulations 5 to 7 are consequential on the establishment of the Legal Aid Appeals Tribunal. An appeal against the refusal of a legal aid certificate will lie to the Tribunal instead of to the Legal Aid Committee. In addition, an opposing party is given a right of appeal against the grant of a certificate.

Regulation 8 enables a legal aid certificate to be issued for a specified period, or limited as to the time to be spent by the assisted person's advocate. Regulation 9 makes provision for legal aid in connection with mediation, and regulation 10 requires the advocate to report unreasonable behaviour by the assisted person to the certifying officer and, in appropriate cases, to make an application for costs.