

CONSULTATION DOCUMENT

Issued by:

Legal Aid Committee

c/o Civil Legal Aid & Legal Costs Section
General Registry
Isle of Man Courts of Justice
Deemsters Walk, Bucks Road, Douglas
ISLE OF MAN
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This consultation document contains an overview of the main proposals contained within the following draft documents:

- Legal Aid (General) (Amendment) Regulations 2014
- Legal Aid (Financial Resources) (Amendment) Regulations 2014
- Legal Aid Remuneration Order 2014
- Duty Advocate (Police Custody)(Amendment) Scheme 2014
- Criminal Legal Aid (Amendment) Regulations 2014

The Legal Aid Committee would like to receive views on proposed amendments to secondary legislation which impact on the administration of legal aid in the Isle of Man.

The consultation period will run from **20th January 2014** to **14th March 2014**.

Background

In 2012 a Legal Aid (Amendment) Act was introduced, the main purpose of which was as follows:

- To allow legal aid to be made available for mediation (prior to court proceedings)
- To provide for greater recovery of legal aid costs
- To constitute a Legal Aid Appeals Tribunal to hear appeals from assisted persons and the opponents of assisted persons against any decision by the Legal Aid Certifying Officer to either award or refuse to award or amend a legal aid certificate.
- To re-constitute the existing Legal Aid Committee so that its membership is now predominantly made up of non-lawyers and to expand its functions to include the oversight of legal aid administration.
- To deal with other minor administrative changes such as disclosure of information in relation to legal aid and audit provisions.

Following the introduction of the Legal Aid (Amendment) Act 2012, the newly constituted Legal Aid Committee was formed early this year, and the Committee is now in a position to bring forward proposals for amendments to secondary legislation with a view to regulating the provision of legal aid for mediation proceedings and introducing the criteria for the imposition of a statutory charge.

The Legal Aid Committee have also considered a number of proposals put before them which would also require amendments to secondary legislation and as part of their consideration of those proposals, the Committee would like to receive the views of any interested persons, bodies or organisations.

Rationale for the main amendments

Legal Aid (General) (Amendment) Regulations 2014

Legal Aid Certifying Officer – Regulation 4

This replaces existing regulations and makes new provision for the appointment of the Legal Aid Certifying Officer (and a Deputy Legal Aid Certifying Officer) and the terms and conditions of their employment. This amendment transfers the power to appoint the Certifying Officers from the Governor to the Legal Aid Committee.

Legal Aid Appeals – Regulations 5 - 7

These regulations are consequential to the establishment of the Legal Aid Appeals Tribunal, for which separate and specific regulations are being progressed.

These regulations introduce a requirement to effect service of a legal aid certificate on every party involved in the proceedings to which the certificate relates and also sets out the framework for progression of appeals to the Legal Aid Appeals Tribunal.

Terms and conditions of a civil legal aid certificate – Regulation 8

This regulation will allow a Legal Aid Certifying Officer, when issuing a legal aid certificate or an amendment to a legal aid certificate, to limit the work authorised to a set number of hours or to require the work to be completed by a specified date, or both.

This amendment will provide a Legal Aid Certifying Officer with greater control in relation to the progression of legal aid cases and the level of work undertaken under a legal aid certificate.

Mediation – Regulation 9

Provision was included within Legal Aid (Amendment) Act 2012 to enable legal aid to be available for mediation prior to proceedings occurring before the court.

The reality is that this practice has been taking place for a number of years and this amendment introduces the legislative framework in this regard.

Legal Aid (Financial Resources) (Amendment) Regulations 2014

Statutory Charge – Regulations 3 - 9

Provision was included within the Legal Aid (Amendment) Act 2012 which allowed for the greater recovery of legal aid costs. One of the mechanisms for recovering legal aid costs is the introduction of what is commonly known as a statutory charge. This process involves imposing a charge on money or property that is recovered or preserved in the proceedings for which the legal aid certificate relates, so that the cost incurred under the said legal aid certificate can be recovered and paid back into the legal aid fund.

These amendment regulations set out the criteria and framework as to when and how a statutory charge should be enforced.

Legal Aid Remuneration Order 2014

Legal aid rate for support staff – Regulation 4

At present there are two hourly rates applicable to work undertaken under a legal aid certificate (for both criminal and civil proceedings). These rates apply to work

undertaken by either a senior advocate (i.e. an advocate who has more than 5 years call to the Manx Bar) or a junior advocate (i.e. an advocate who has less than 5 years call). The rates are presently £135 and £115 per hour respectively.

It is common practice, particularly within large legal practices, for Advocates to delegate work to support staff. These regulations introduce an additional rate for fee earning work that is undertaken by support staff, which is allowable under the legal aid certificate.

Legal aid rate for proceedings in summary courts – Regulation 4(3)

As mentioned in the section above, two hourly rates exist in relation to work undertaken under a legal aid certificate (for both criminal and civil proceedings). These rates apply to respective seniority of Advocate regardless of which court the proceedings were dealt with.

This amendment stipulates that a senior advocate who undertakes work relevant to proceedings in the summary court shall be remunerated at the rate payable to a junior advocate for such work.

Duty Advocate (Police Custody)(Amendment) Scheme 2014

Claims for part hour

At present, if the duty advocate is called out to attend at a police station to provide advice to a suspect or suspects, they are entitled to claim for their time spent at the police station and they are also entitled to round the claim up to the nearest hour. This amendment alters the provisions of the scheme so that the duty advocate is paid for their actual attendance time only.

Consideration of responses

Please send your response to this consultation document, which should include observations and any other general comments you have in relation to any of the proposed provisions contained within the draft regulations, to us by close of business on 14th March 2014.

Replies should be sent to the following officer in writing (preferably by email):

John Kennish
Secretary, Legal Aid Committee
Civil Legal Aid & Legal Costs Section
General Registry
Isle of Man Courts of Justice
Bucks Road
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IM1 3AR

Telephone: 01624 686464

Fax: 01624 685367

Email: legalaid@registry.gov.im

Please note that your response to this consultation paper will not guarantee a change to the proposals.

A summary of responses received may be made available following conclusion of this consultation exercise. This may include your name. Please state clearly if you do not wish for your name to be included in any summary.

ANNEX

List of Bodies being consulted:

- a. General Public
- b. Tynwald Members
- c. Local Authorities
- d. Chief Officers
- e. Chamber of Commerce
- f. Isle of Man Law Society
- g. Isle of Man Children's Centre
- h. Mediators
- i. Judiciary
- j. Citizen Advice Bureau

Please notify the responsible officer of any other bodies or organisations you feel should be included within this consultation exercise.