Statutory Document No: 144/97

THE LEGAL AID ACT 1986

THE LEGAL AID (GENERAL) 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 2, 6, 16 and 23(4) of and Schedule 2 to the Legal Aid Act 1986[a], and of all other enabling powers, the following Regulations are hereby made:-

Citation, commencement and interpretation

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

(2) In these Regulations -

"the Act" means the Legal Aid Act 1986;

"agent" has the meaning given by the Judicial Committee Rules;

"approved form" means a form approved by the certifying officer after consulting the Chief Registrar, where appropriate;

"assisted person" means a person in respect of whom a legal aid certificate is in force;

"certifying officer" means the person appointed as certifying officer under regulation 2(1), and includes a deputy certifying officer appointed under regulation 2(2);

"the Committee" means the Legal Aid Committee;

"domestic proceedings" means domestic proceedings (within the meaning of the Summary Jurisdiction Act 1989[b]) in a court of summary jurisdiction;

"inquest" means proceedings in an inquest held under the Coroners of Inquests Act 1987[c];

"the Judicial Committee" means the Judicial Committee of the Privy Council;

"the Judicial Committee Rules" means the Judicial Committee (General Appellate Jurisdiction) Rules[d];

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[a] 1986 c.23
[b] 1989 c.15
[c] 1987 c.6
[d] SI 1982/1676

"legal aid certificate" means a certificate granted in accordance with these Regulations providing for legal aid and includes any amendment to such certificate issued under regulation 9(5);

"matrimonial proceedings" means any proceedings for divorce, nullity of marriage or judicial separation and includes ancillary proceedings arising therefrom;

"panel" means the panel of advocates prepared and maintained under section 13 of the Act;

"prescribed" means prescribed by the Legal Aid (Financial Resources) Regulations 1997[e];

"Privy Council proceedings" means proceedings in the Judicial Committee in the exercise of its criminal and civil jurisdiction in relation to appeals from courts in the Island, and includes all steps and proceedings preliminary or incidental to and representation in such proceedings.

Certifying officer

2. (1) Subject to paragraph (3), the Governor shall appoint a certifying officer who shall discharge all the functions conferred upon him by these Regulations and any other regulations made under the Act.

(2) Subject to paragraph (3), the Governor may appoint a deputy certifying officer to act in the place of the 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) -

(a) shall be an advocate, a barrister or solicitor of at least 7 years standing but shall not be a practising advocate, barrister or solicitor;

(b) shall hold office at the pleasure of the Governor;

(c) shall be paid such allowances and expenses as the Treasury may direct.

(4) The Civil Service Commission shall appoint such officer or officers as it shall think necessary to enable the certifying officer to discharge his functions in accordance with these Regulations.

(5) Without prejudice to paragraph (2), the Committee may direct that such officer appointed under paragraph (4) as may be specified in the direction may exercise on behalf of the certifying officer such of the functions conferred on the certifying officer by regulations under the Act, subject to such conditions, as may be so specified, and anything done by an officer in pursuance of this paragraph shall be as valid as if it had been done by the certifying officer.

Effect of legal aid certificate

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3. (1) Legal aid shall be available to any person to whom a legal aid certificate has been granted in accordance with these Regulations.

(2) Any document purporting to be a legal aid certificate granted in accordance with these Regulations shall, until the contrary is proved, be deemed to be a valid certificate for all the purposes there set out.

Applications for legal aid certificates

4. (1) Any person desiring legal aid may apply for a legal aid certificate to the certifying officer..

(2) Every application shall be made in writing in an approved form or in such other form as the certifying officer may accept as sufficient in the circumstances of the case and shall be lodged with the certifying officer.

(3) Every applicant shall state the name of the advocate (being a member of the panel) who has been selected by the applicant to act for him and who has consented to act for the applicant, and shall also contain such other information and shall be accompanied by such documents as may be requisite -

(a) to enable the certifying officer to determine whether it is reasonable that a legal aid certificate shall be granted; and

(b) to enable the Chief Registrar to determine the financial resources of the applicant and the maximum contribution, if any, to be made by him.

(4) Except in the case of an inquest, every application shall be accompanied by a statement in writing, prepared by the advocate referred to in the application, which shall -

(a) state the nature of the proceedings in relation to which legal aid is sought and the circumstances in which legal aid is required;

(b) express an opinion as to whether or not the proceedings are proper proceedings, both in law and fact, to pursue; and

(c) state whether or not the applicant is *sui juris* and whether the court before which the proceedings are to be brought has jurisdiction.

(5) Subject to paragraph (6), every application relating to an inquest shall be accompanied by a statement in writing, prepared by the advocate referred to in the application, which shall -

(a) give particulars of -

(i) the deceased person to whose death the proceedings relate;

(ii) the circumstances of his death, so far as the applicant is aware of them; and

(iii) the nature of the applicant's interest in the proceedings (whether as a spouse or dependant of the deceased, or as a defendant in an action which may thereafter be brought, or as the case may be);

(b) express an opinion as to whether it is proper for the applicant to be represented in the proceedings.

(6) In the case of an inquest *under section 18 of the Coroners of Inquests Act 1987*, the said statement shall, instead of the particulars specified in paragraph (5)(a), give particulars of -

(i) the nature, and the value (if known), of the property to which the proceedings relate;

(ii) the circumstances of the finding of the property, so far as the applicant is aware of them; and

(iii) the nature of the applicant's interest in the proceedings (whether as finder of the property, or as the owner or occupier of the land on or in which it was found, or as the case may be).

(7) The applicant and the advocate shall if so required by the certifying officer supply such further information or documents as he may require; and the applicant and the advocate, or either of them, shall if so required by the certifying officer attend for an interview.

(8) The applicant shall if so required by the Chief Registrar -

(a) supply such further information or documents as he may require; and

(b) attend for an interview.

(9) In the case of a person resident outside the Island and not able to be present there while his application is being considered, the application -

(a) subject to paragraph (10), shall be in English,

(b) shall be sworn -

(i) if the person is resident within the Commonwealth or the Republic of Ireland, before any justice of the peace or magistrate or any other person for the time being authorised by law in the place where he is to administer an oath for any judicial or other legal purpose, or,

(ii) if he is resident elsewhere, before a consular officer in the service of the Government of the United Kingdom, or any other person for the time being authorised to exercise the functions of such consular officer or having authority to administer an oath in that place, and

(c) shall be accompanied by a statement in writing signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant's income and capital.

(10) The requirements of paragraph (9)(a) shall not apply in the case of an application in French or accompanied by a translation into English or French which is transmitted pursuant to the European Agreement on the Transmission of Applications for Legal Aid[f].

(11) The requirements of paragraph (9) may be waived by the Chief Registrar where compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the provisions of paragraphs (2), (3) and (4) or (5) and (6).

Child abduction and custody

5. (1) A person whose application under the Hague Convention or the Custody Convention has been submitted to the Central Authority pursuant to section 25(1) or section 36(1) of the Child Custody Act 1987[g] and on whose behalf an advocate has been instructed in connection with the application -

(a) shall be eligible to receive legal aid whether or not his financial resources are such as to make him eligible to receive it under the Legal Aid (Financial Resources) Regulations 1997;

(b) shall not be refused legal aid by virtue of section 2(4) of the Act; and

(c) shall not be required to pay a contribution to the Treasury under section 3(2)(c) of the Act;

and these Regulations (with the exception of those provisions relating to the determination of financial resources, consideration of the merits of the applicant's case and payment of contributions) shall apply accordingly.

(2) In this regulation "the Hague Convention" and "the Custody Convention" have the meanings given by sections 23(1) and 34(1) respectively of the Child Custody Act 1987.

Applications on behalf of persons under disability

6. (1) Save as is hereinafter provided an application for legal aid for a minor or a person suffering from mental disorder shall be made on his behalf by a person of full age and capacity and, where the application relates to proceedings which are required by rules of court to be brought or defended by a next friend or guardian *ad litem* or receiver, that person shall be the next friend, guardian *ad litem* or receiver, or, where the application relates to proceedings and they have not actually begun, the receiver or a person who, subject to any contrary order of the court, intends to act as either next friend or guardian *ad litem* when the proceedings begin.

(2) The certifying officer shall not grant a legal aid certificate applied for by a person on behalf of a minor or a person suffering from mental disorder unless that person has signed an undertaking to pay to the Treasury (if called upon to do so) any sum which by virtue of any provision of the Act or these Regulations the Chief Registrar may require an

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[f] 1978, Cmnd.7179
[g] 1987 c.11

assisted person of full age and capacity to pay upon the issue or during the currency or upon the discharge or revocation of the certificate.

(3) Any legal aid certificate granted by virtue of these Regulations shall be in the name of the minor or the person suffering from mental disorder, stating the name of the person who has applied on his behalf.

(4) In any matter relating to the grant, amendment, revocation or discharge of a legal aid certificate granted by virtue of this regulation and in any other matter which may arise as between an assisted person and the certifying officer or the Chief Registrar, the person who has applied on behalf of the minor or person suffering from mental disorder for such a certificate shall be treated for all purposes (including the receipt of notices) as the agent of the minor or person suffering from mental disorder.

(5) The certifying officer or the Chief Registrar, as the case may be, may, where the circumstances appear to make it desirable, waive all or any of the requirements of paragraphs (1) to (4).

(6) Without prejudice to paragraph (5), an application for legal aid for a minor may be made by the minor himself in relation to any of the following proceedings to which he is or may be a party or which relate or may relate to him -

(a) family proceedings (within the meaning of the Matrimonial Proceedings Act 2003) and

(b) proceedings under any provision of the Children and Young persons Act 2001

and a legal aid certificate may be granted to him in relation to such proceedings without complying with paragraph (2).

Grant of legal aid certificates

7. (1) Without prejudice to section 2(4) of the Act and subject to the following paragraphs and to regulation 8, the certifying officer upon receipt of an application shall, unless he is satisfied that it ought to be refused, refer it to the Chief Registrar for him to determine in the prescribed manner -

(a) the financial resources of the applicant;

(b) the sum, if any, which shall be payable to the Treasury by way of maximum contribution; and

(c) the number, frequency and amount of the instalments which will, if the maximum contribution will be required, secure that it will be paid within the periods prescribed by Schedule 1, part 2, paragraph 16 of the Legal Aid (Financial Resources) Regulations 1997.

(2) If the Chief Registrar notifies the certifying officer that he is satisfied that the financial resources of the applicant, as determined in the prescribed manner, do not exceed the prescribed amount, the certifying officer shall, subject to the following paragraphs, grant a legal aid certificate.

(3) The certifying officer shall not grant a legal aid certificate except after consideration of all questions of law or fact arising out of the action, cause or matter to which the application relates and the circumstances in which it was made, including (except in the case of domestic proceedings) whether it is reasonable and proper for persons concerned jointly with or having the same interest as the applicant to defray so much as would be payable by the Treasury in respect of the proceedings if such a certificate was granted.

(4) Without prejudice to the powers of the certifying officer under these Regulations, the certifying officer shall not grant a legal aid certificate if the application relates to Privy Council proceedings, without first consulting with a Deemster or the Attorney General, as the circumstances require.

(5) Nothing in paragraph (4) prevents the certifying officer or the Chief Registrar from seeking the advice of the Attorney General or of the Committee on any matter relating to legal aid.

(6) Without prejudice to paragraph (3), an application may be refused -

(a) where it appears to the certifying officer that only a trivial advantage would be gained by the applicant from the proceeding to which the application relates or that on account of the simple nature of the proceedings an advocate would not ordinarily be employed; or

(b) where it is made in a representative, fiduciary or official capacity and the certifying officer, having taken into account the value of the property or estate or the amount of the fund out of which the applicant is entitled to be indemnified and the resources of the persons, if any, who might benefit from the outcome of the proceedings, has concluded that such refusal will not cause hardship; or

(c) where it is made by, or on behalf of, a person in connection with an action, cause or matter in which numerous persons have the same interest and in accordance with rules of court one or more persons may sue or be sued, or may be authorised by a court to defend, any such action, cause or matter on behalf of or for the benefit of all persons so interested, and in the opinion of the certifying officer the right of the applicant would not be seriously prejudiced by such refusal; or

(d) where it appears to the certifying officer that the applicant has available rights or facilities making it unnecessary for him to obtain legal aid or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, and has failed in the opinion of the certifying officer to take all reasonable steps to enforce or obtain such rights, facilities or help, including permitting the certifying officer to take those steps on his behalf:

Provided that where it appears that the applicant has a right to be indemnified against expenses incurred in connection with any proceedings, it shall not for the purposes of this sub-paragraph be deemed a failure to take reasonable steps, if he has not taken proceedings to enforce that right, whether for a declaration as to that right or otherwise;

(e) where it appears to the certifying officer that the applicant's conduct in making repeated applications for legal aid amounts to an abuse of the facilities provided by the Act.

(7) If the certifying officer is satisfied that the action, cause or matter to which the application relates is of such urgency that a legal aid certificate ought to be issued immediately, and on the applicant lodging with him an undertaking in a form approved by him to pay any contribution that may be required to be paid under these Regulations, the certifying officer may, subject to regulations 10(3) and 12(9), issue a legal aid certificate, notwithstanding that the Chief Registrar is not satisfied that the financial resources of the applicant do not exceed the prescribed amount and that he has not determined that contribution payable, and may issue such a certificate for such limited period as may be specified therein.

Legal aid certificates

8. (1) A legal aid certificate may be granted in respect of the whole or part of any proceedings referred to in Part I of Schedule 1 to the Act, but no certificate shall relate to proceedings (other than interlocutory appeals) both in a court of first instance and in an appellate court or in more than one appellate court.

(2) Unless a certificate otherwise provides it shall not without authority granted by virtue of regulation 15(1) extend to -

(a) the addition of any further parties except in domestic proceedings or matrimonial proceedings; or

(b) any steps having the same effect as a cross-action or a reply thereto or to a cross-appeal; or

(c) lodging an interlocutory appeal.

(3) A certificate shall not relate to more than one action, cause or matter except in the case of -

(a) domestic proceedings; or

(b) matrimonial proceedings; or

(c) an application for a grant of representation which is necessary to enable the action, which is the subject matter or purpose of the certificate, to be brought; or

(d) proceedings to enforce or give effect to any order, or agreement made in the proceedings to which the legal aid certificate relates; and for the purposes of this sub-paragraph proceedings to enforce or give effect to an agreement or order shall include proceedings in bankruptcy or to wind up a company.

(4) Where an application for legal aid is approved and no contribution will be payable, or where a legal aid certificate is issued in pursuance of regulation 6(6), the

certifying officer shall send the legal aid certificate to the advocate selected by the applicant and a copy of the said certificate to the applicant.

(5) Where an application for legal aid is approved and a contribution will be payable, the certifying officer shall notify the applicant of -

(a) the maximum amount of his contribution;

(b) the number, frequency and amount of the instalments required under regulation 7(1)(c); and

(c) any other terms on which a legal aid certificate will be granted to him.

(6) An applicant who desires that a legal aid certificate should be granted to him on the terms notified by the certifying officer shall within 35 days of being so notified, or within such other period of the certifying officer may allow -

(a) signify his acceptance of those terms in an approved form; and

(b) sign on the said form an undertaking to pay the contribution by the instalments stated in the terms.

(7) Upon receipt of the form referred to in paragraph (6) and, if the contribution or part of it is required to be paid before the certificate is granted, when such payment is made, the certifying officer shall cause -

(a) a legal aid certificate to be sent to the advocate selected by the applicant being an advocate who has consented to act for the applicant in the proceedings in relation to which the legal aid certificate is given; and

(b) a copy of the legal aid certificate to be sent to the applicant.

(8) A legal aid certificate may be granted or amended to cover attempts to negotiate a settlement (including by means of alternative dispute resolution).

Duty of assisted person on change of circumstances

9. Whenever the circumstances upon which the Chief Registrar has determined the financial resources of an assisted person have altered so that the person has reason to believe that his financial resources have increased, he shall inform the Chief Registrar of that alteration and supply such further information or documents as may be required of him, and, if required by the Chief Registrar, attend for an interview.

Amendment of legal aid certificates

10. (1) The certifying officer may amend a legal aid certificate where in his opinion -

(a) there has been some mistake; or

(b) except in the case of an inquest, it has become desirable to the certificate to extent to other steps or proceedings; or

(c) except in the case of an inquest, it has become desirable for the certificate not to extend to certain of the steps or certain of the proceedings in respect of which it was issued; or

(d) a change of advocates should be authorised;

(e) under regulation 15(1) an advocate should be authorised to take any of the steps referred to in regulation 8(2).

(2) Without prejudice to paragraph (1), the certifying officer shall amend a legal aid certificate where he is required to do so by the Chief Registrar on the ground that -

(a) the circumstances upon which the Chief Registrar determined the assisted person's financial resources have altered, or

(b) the amount of contribution payable by the assisted person is altered by reason of an amendment to the Legal Aid (Financial Resources) Regulations 1997.

(3) The certifying officer shall amend a legal aid certificate issued in pursuance of regulation 7(7) if he is notified by the Chief Registrar that he has determined that any contribution is payable by the assisted person.

(4) Regulations 3, 4, 5, 6 and 7 shall apply so far as appropriate, to applications for the amendment of legal aid certificates as they apply to applications for such certificates.

(5) Where the certifying officer amends a legal aid certificate, he shall issue an amendment to the certificate in an approved form and shall send it to the assisted person's advocate and a copy thereof to the assisted person.

Refusal of a legal aid certificate and appeal

11. (1) If the certifying officer refuses an application for a legal aid certificate or for the amendment of a legal aid certificate, he shall notify the applicant and his advocate of his decision in writing, stating the grounds on which he has refused the application, and shall inform the applicant of his right to appeal to the Committee for the decision to be reviewed under this regulation.

(2) 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 Committee, except that 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 the Privy Council proceedings); or

(b) the maximum amount of contribution, or the method by which it is to be paid.

(3) Every appeal shall be brought by giving to the Committee, within 4 days of the receipt of the notice of refusal or such longer period as the Committee may allow, a notice in writing of his intention to appeal.

(4) The applicant shall give a copy of the notice referred to in paragraph (3) to the certifying officer and, in the case of Privy Council proceedings, the Chief Registrar; and the certifying officer or the Chief Registrar, as the case may be, shall supply the Committee with such information relating to the matter in question as the Committee may require.

(5) An appeal shall be by way of review of the general circumstances in which the application for a legal aid certificate or for the amendment of a legal aid certificate was made.

(6) Upon an appeal an appellant may -

(a) with his notice of appeal, furnish further statements in writing in support of his application; and

(b) if required by the Committee, appear before the Committee in support of his application.

(7) An appellant may conduct the appeal himself, be represented by an advocate or be assisted by some other person whom he may appoint for the purpose.

(8) The Committee shall determine the appeal in such manner as seems to them just, and without prejudice to the generality of the foregoing may -

(a) dismiss the appeal; or

(b) direct the certifying officer to offer a legal aid certificate subject to such terms and conditions, or (as the case may be) to amend the legal aid certificate in such manner as the Committee thinks fit; or

(c) instead of themselves settling such terms and conditions, direct the certifying officer to do so; or

(d) refer the matter or any part of it back to the certifying officer for his determination and report.

(9) Any decision of the Committee with regard to an appeal shall be final and they shall give notice of their decision to the appellant and to any advocate acting for him.

(10) An appeal, and all matters incidental thereto, shall be conducted or done at the appellant's own expense.

Discharge and revocation of legal aid certificate

12. (1) A legal aid certificate may be either discharged or revoked in the circumstances specified in this regulation.

(2) The certifying officer may at any time discharge a legal aid certificate from such date as he considers appropriate -

(a) at the request of the assisted person; or

(b) where an assisted person has been required to make a contribution and any payment in respect thereof is more than 21 days in arrear; or

(c) on being satisfied by the report of an assisted person's advocate or otherwise -

(i) that the assisted person has died; or

(ii) that the assisted person has executed a deed of arrangement, has been adjudicated a bankrupt or has had a receiving order made against him; or

(iii) that the proceedings to which the legal aid certificate relates have been disposed of; or

(iv) that the work authorised by the certificate has been completed; or

(d) where the certificate, being a certificate issued for a limited period pursuant to regulation 7(7), has expired.

(3) The certifying officer may in the case of Privy Council proceedings, and shall in any other case, discharge a legal aid certificate from such date as he considers appropriate if as a result of information which has come to his knowledge or where the assisted person's advocate has given up the case, he considers that -

(a) the assisted person no longer has reasonable grounds for taking, defending or being a party to the proceedings or, in the case of an inquest, no longer has a reasonable interest in the proceedings; or

(b) the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustifiable expense to the Treasury; or

(c) it is unreasonable in the particular circumstances that the assisted person should continue to receive legal aid;

Provided that a legal aid certificate shall not be discharged under this paragraph until notice has been served on the assisted person that the certifying officer may do so and that he may show cause why such certificate should not be discharged.

(4) The certifying officer shall discharge a legal aid certificate from such date as he considers appropriate if he is notified by the Chief Registrar that as a result of a determination by him it appears that the financial resources of the assisted person exceed the maximum amount which makes legal aid available to an applicant.

(5) Except in the case of an inquest, the court may make an order revoking a legal aid certificate or discharging it from such date as may be appropriate at any time during the hearing of any proceedings to which an assisted person is a party upon application by, or on behalf of, any other party to the proceedings or by the certifying officer, where the court considers that the assisted person has -

(a) in relation to any application for such a certificate, made an untrue statement as to his financial resources or has failed to disclose any material fact concerning them whether the statement was made or the failure occurred before or after the issue of such certificate; or

(b) wilfully failed to comply with these Regulations by not furnishing to the certifying officer any material concerning anything other than his financial resources; or

(c) knowingly made an untrue statement in furnishing such information.

(6) In the case of an inquest, the certifying officer may revoke a legal aid certificate or discharge it from such date as may be appropriate at any time during the proceedings where -

(a) he is notified by the Chief Registrar that the assisted person, in relation to any application for the certificate, made an untrue statement as to his financial resources or has failed to disclose any material fact concerning them, whether the statement was made or the failure occurred before or after the issue of such certificate; or

(b) the certifying officer considers that the assisted person has -

(i) wilfully failed to comply with these Regulations by not furnishing to the certifying officer any material concerning anything other than his financial resources; or

(ii) knowingly made an untrue statement in furnishing such information.

(7) No order shall be made under paragraph (5) or (6) -

(a) until the assisted person has been given an opportunity to show cause why the certificate should not be discharged or, as the case may be, revoked, and

(b) by reasons of any misstatement such as is referred to in paragraph (5)(a) or (6)(a), if the assisted person satisfies the court or the certifying officer, as the case may be, that he used due care or diligence to avoid such misstatement or failure.

(8) Where an application is made under paragraph (5) the decision of the court shall be final and where the application is made by the certifying officer the court may order the certifying officer to be made a party to the proceedings for the purpose of the application.

(9) Regulation 11(2) to (10) applies to the revocation of a legal aid certificate under paragraph (6) as it applies to the refusal of a legal aid certificate.

(10) The certifying officer shall revoke a legal aid certificate issued in pursuance of regulation 7(7) if as a result of a determination by the Chief Registrar it appears that the financial resources of the assisted person exceed the maximum amount which makes legal aid available to an applicant.

(11) The certifying officer may, after giving the assisted person an opportunity to show cause why the certificate should not be revoked, revoke a legal aid certificate if he is

satisfied that the assisted person has failed to attend for an interview or provide information or documents when so required under these Regulations or has done any of the things referred to in regulation 12(5)(a) to (c).

(12) Where the certifying officer discharges or revokes an assisted person's legal aid certificate he shall forthwith issue a notice of discharge or notice of revocation, as the case may be, and shall send the notice to his advocate, and shall send a further copy of the notice to the assisted person.

Effect of discharge and revocation of legal aid certificates

13. (1) Subject to this regulation, a person whose legal aid certificate is revoked shall be deemed never to have been an assisted person in relation to the claim or proceedings to which such certificate relates, and a person whose legal aid certificate is discharged shall, from the date of the discharge, cease to be an assisted person in the proceedings.

(2) Upon receipt by him of a notice of revocation or discharge of a legal aid certificate by the certifying officer or upon revocation or discharge of a legal aid certificate by the court, the retainer of any advocate selected or acting on behalf of the assisted person under such certificate shall forthwith determine.

(3) Upon the determination of a retainer under this regulation -

(a) the costs of the proceedings to which the legal aid certificate relates, incurred by or on behalf of the person to whom it was granted, shall as soon as practicable thereafter be taxed or assessed in accordance with the provisions of the Act and these Regulations; and

(b) the Treasury shall remain liable for the payment of any costs so taxed or assessed.

(4) Where a legal aid certificate has been revoked -

(a) the certifying officer shall have the right to recover as a sum due to the Treasury from the person to whom the certificate was issued the costs paid or payable under paragraph (3)(b), less any amount received from him by way of contribution; and

(b) the advocate who has acted under the certificate shall have the right to recover from that person the difference between the amount paid or payable by the Treasury and the full amount of his advocate's party and party costs.

(5) Where a legal aid certificate has been discharged, the person to whom the certificate was issued shall remain liable for the payment of contribution, if any, up to the amount paid or payable by the Treasury under paragraph (3)(b), and under section 6 of the Act.

Legal aid granted after costs incurred

14. (1) Any advocate who has acted on behalf of the assisted person in proceedings to which a legal aid certificate relates before the date of the certificate, and any advocate who

has by law a lien on any documents necessary for the proceedings and who has delivered them up subject to his lien, may give notice of the fact to the Chief Registrar.

(2) If any costs are recovered for the assisted person the Chief Registrar shall cause to be paid to such advocate out of the sum so recovered the costs to which he would have been entitled following a taxation between advocate and client where the costs were to be paid out of a common fund in which the client and others were interested.

(3) In any case where the sums so recovered are insufficient to pay those costs in full in accordance with paragraph (2) and also to meet the sums paid or payable by the Treasury on the assisted person's account, the said sums shall be divided between the Treasury and the advocate in the same proportion as those costs bear to the costs allowed on taxation as between party and party in respect of the period during which the certificate was in force.

(4) In any case in which -

(a) the costs payable to the advocate under this regulation; or

(b) the party and party costs incurred during the period in which the legal aid certificate was in force,

have not been ascertained by taxation they shall for the purposes of this regulation be fixed by the Chief Registrar.

(5) Paragraphs (2) to (4) do not apply in the case of an inquest.

Duties of advocates

15. (1) Where it appears to the assisted person's advocate necessary for the proper conduct of the proceedings to take any of the steps referred to in regulation 8(2) he shall, unless authority has been given in the legal aid certificate, apply to the certifying officer for such authority.

(2) The Chief Registrar, after consultation with the Committee, may give general authority to advocates acting for assisted persons in any particular class of case -

(a) to obtain a report or opinion of one or more experts or to tender expert evidence;

(b) to employ a person to provide a report or opinion (other than as an expert);

(c) to bespeak transcripts or shorthand notes or tape recordings of any proceedings;

and if he does so he shall authorise the maximum fee payable for any such report, opinion, expert evidence or transcript.

(3) Where it appears to an assisted person's advocate that any of the matters described in paragraph (2) is necessary to the proper conduct of the proceedings and such matters have not been generally authorised as aforesaid, the advocate may apply to the

certifying officer for the necessary authority, and such authority may be given by the certifying officer subject to terms and conditions as he thinks appropriate.

(5) Where prior authority has been given under paragraph (1) no question as to the propriety of any step shall be raised on a taxation in accordance with Schedule 2 to the Act, but where no such prior authority has been obtained, except in respect of an interlocutory appeal, no payment for the step or act shall be allowed on a taxation unless it is also allowed on a party and party taxation.

(6) Where prior authority has been given under paragraph (2) or (3) no question as to the propriety of the act shall be raised on a taxation in accordance with Schedule 2 to the Act, but where no such prior authority has been obtained or where an interlocutory appeal has been lodged without prior authority, payment for the act may still be allowed on taxation.

(7) Paragraphs (5) and (6) do not apply in the case of an inquest.

(8) Where a legal aid certificate has been issued in connection with any proceedings, the assisted person's advocate shall not take any payment for work done in those proceedings during the currency of that certificate (whether within the scope of the certificate or otherwise) except such payments as may be made by the Treasury.

(9) Where a legal aid certificate has been issued, it shall be the duty of the assisted person's advocate ---

(a) to consider whether at any stage in the proceedings it is appropriate to negotiate a settlement or seek alternative dispute resolution in a matter at any time, and

(b) to seek approval of the proposed course of action from the certifying officer at that time.

Conduct of proceedings on behalf of assisted persons

16. (1) Without prejudice to the right of an advocate to give up a case for good reason, any advocate may give up an assisted person's case if in his opinion, the assisted person has -

(a) required it to be conducted unreasonably so as to incur an unjustifiable expense to the Treasury or has required unreasonably that the case be continued; or

(b) wilfully failed to comply with any regulation as to the information to be furnished by him or in furnishing such information has knowingly made a false statement or false representation.

(2) Where an advocate exercises the right to give up an assisted person's case under paragraph (1) the advocate shall make a report to the certifying officer of the circumstances in which that right was exercised.

(3) Where upon receiving such a report the certifying officer does not discharge the assisted person's legal aid certificate from under regulation 12, he shall require the assisted person to select another advocate from the panel to act for him.

(4) No advocate acting for an assisted person shall -

(a) receive or be a party to any payment made in contravention of regulation 15(8); or

(b) entrust the conduct of any part of the case to another person save to an advocate who is a member of the panel.

(5) Nothing in paragraph (4) shall prevent an advocate acting for an assisted party from entrusting a formal appearance before a court to another advocate who is not a member of the panel.

(6) An assisted person's advocate shall give the certifying officer such information regarding the progress of the proceedings to which the legal aid certificate relates as the certifying officer may from time to time require for the purpose of discharging his functions under these Regulations, and without prejudice to the generality of the preceding words, an advocate who has acted or is acting for an assisted person shall on being satisfied that -

(a) the assisted person has died; or

(b) has executed a deed of arrangement or has been made a bankrupt,

report the facts to the certifying officer.

(7) No advocate shall be precluded, by reason of any privilege arising out of the relationship between advocate and client, from disclosing to the certifying officer any information or from giving any opinion which may enable the certifying officer to perform his functions under regulation 12(3)(b) and (c), and for the purpose of providing information under that paragraph any party may disclose to the certifying officer any correspondence in relation to the proceedings sent to or by the assisted person's advocate whether or not marked "without prejudice".

(8) An advocate shall report forthwith to the certifying officer either upon the completion of the case if he has completed the work authorised by the legal aid certificate or if for any reason he has been unable to do so.

Service of notices

17. (1) Any notice required to be served under any provision of these Regulations shall be served -

(a) personally; or

(b) by sending it by prepaid post to the last known address of the person required to be served; or

(c) except in the case of an inquest, if served together with any process of a court by any mode of service authorised by rules of court for service of that process.

(2) Whenever an assisted person becomes a party to proceedings, or a party to proceedings becomes an assisted person, his advocate shall forthwith -

(a) serve all other parties with a notice in an approved form of the grant of a legal aid certificate;

(b) if at any time thereafter any other person becomes a party to the proceedings, forthwith serve similar notice upon such person.

(3) An advocate who receives from the certifying officer under the provisions of these Regulations -

(a) a notice of revocation or of discharge of a legal aid; or

(b) an amendment to a certificate under regulation 10(1),

shall forthwith serve notice in an approved form upon any other persons who are parties to the proceedings, and if any other party becomes a party to the proceedings, serve a similar notice upon such person.

(4) Save as is otherwise provided by these Regulations, in any proceedings in any court to which an assisted person is a party the procedure shall be regulated by the rules of procedure for that court.

(5) Paragraphs (2) to (4) do not apply in the case of an inquest.

Property recovered or preserved for and costs agreed to be paid to or awarded to an assisted person

18. (1) This regulation does not apply in the case of an inquest.

(2) For the purpose of this regulation "assisted person" includes a person in respect of whom a certificate has been, but is no longer, in force.

(3) Subject to paragraph (10), all monies payable to an assisted person, in the case of domestic proceedings, by virtue of an order or agreement for the payment of costs to the assisted person, and in any other case -

(a) by virtue of any agreement or order made in connection with the action, cause or matter to which his certificate relates, whether such agreement was made before or after the proceedings were taken; or

(b) being monies payable in respect of the action, cause or matter to which his certificate relates upon the distribution of property of a person who has executed a deed of arrangement or has been adjudicated a bankrupt, or of a company in liquidation; or

(c) being monies which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or

(d) being monies standing in court to the credit of any proceedings to which his certificate relates,

shall be paid or repaid, as the case may be, to the assisted person's advocate or, if he is no longer represented by an advocate, to the Chief Registrar and only the advocate or the Chief Registrar (as the case may be) shall be capable of giving a good discharge for monies so payable:

Provided that -

(i) where monies become payable to the advocate of the assisted person out of property of a person who has been adjudicated a bankrupt, or has executed a deed of arrangement, or of a company in liquidation, as aforesaid, the advocate or the Chief Registrar, as the case may be, shall send to the trustee in bankruptcy, the trustee or assignee of the deed of arrangement, or the liquidator of the company in liquidation, a notice which shall thereupon operate as a request by the assisted person for payment of such monies to the advocate or the Chief Registrat, as the case may be, and shall be sufficient authority for that purpose; and

(ii) except in the case of domestic proceedings, where any monies recovered or preserved for an assisted person in any proceedings have been paid into or remain in court and invested for the benefit of the assisted person, such monies may be paid to the assisted person.

(4) An assisted person's advocate shall, except in the case of domestic proceedings -

(a) inform the Chief Registrar of any property recovered or preserved for the assisted person; and

(b) pay to the Treasury all monies received by him by virtue of an order or agreement made in the assisted person's favour:

Provided that where the Chief Registrar considers that the rights of the Treasury will thereby be safeguarded and so directs, he shall -

(i) pay only such sums which, in the opinion of the Chief Registrar, should be retained by the Treasury in order to safeguard its rights under any provision of the Act and these Regulations, and

(ii) pay any other monies to the assisted person.

(5) In the case of domestic proceedings, the assisted person's advocate shall pay to the Treasury all monies received by him by virtue of an order or agreement for the payment of costs made in the assisted person's favour.

(6) Where in any proceedings to which an assisted person is a party an order to agreement is made for the payment of costs to the assisted person, the Treasury may take such proceedings in its own name as may be necessary to enforce or give effect to such an order or agreement.

(7) Upon receipt of monies paid to him under this regulation the Chief Registrar may retain on behalf of the Treasury -

(a) subject to regulation 14(2), any sum paid under an order or agreement for costs made in the assisted person's favour in respect of the period covered by his certificate;

(b) a sum equal to the deficiency recoverable as a sum due to the Treasury under section 4(4) of the Act;

(c) any costs of proceedings taken by the Treasury under paragraph (6);

and shall pay the balance to the assisted person.

(8) The Chief Registrar may defer the payment to an assisted person's advocate of his profit costs in connection with the proceedings until he has, in the Chief Registrar's opinion, given effect to any provisions of this regulation.

(9) The court shall notify the Chief Registrar before any payment is made to an assisted person under proviso (ii) to paragraph (3).

(10) This regulation does not apply to -

(a) payments in accordance with an order under -

(i) section 38 of Matrimonial Proceedings Act 2003 and sections 26(1) and 27 of that Act in respect of periodical payments and secured periodical payments respectively;

(ii) section 2(1)(a) or section 5 of the Inheritance (Provision for Family and Dependants) Act 1982[h];

(iii) section 60(1)(a) or (c), section 64(2)(a) or (c), section 65(2) or 68(1) of the Matrimonial Proceedings Act 2003

(iv) paragraph 1(1)(a) or (b) or 2(1)(a) of Schedule 1 to the Children and Young Persons Act 2001.

(b) monies paid in lieu or with respect to any arrears of any payments referred to in sub-paragraph (a);

(c) monies payable, whether by way of arrears or otherwise, under an agreement in writing made between parties to a marriage for the purpose of their living separately and containing financial arrangements (whether made during the continuance or after the dissolution or annulment of the marriage);

(d) payments of money under the provisions of any Act which provides for the enforcement of or giving effect to an order made under one of the provisions specified in sub-paragraph (a);

(e) monies paid as a result of proceedings taken in the Island to enforce the order made by a court outside the Island in proceedings for relief comparable to that which may be given by the court in the Island under a provision specified in sub-paragraph (a).

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[h] 1982 c.8

Miscellaneous provisions as to costs

19. (1) This Regulation does not apply in the case of domestic proceedings or an inquest.

(2) Where the retainer of an assisted person's advocate is determined before proceedings are actually begun and there has been no subsequent change of advocate under the certificate, the amount of the costs shall be assessed by the Chief Registrar.

(3) Where proceedings have begun and -

(a) the advocate is of the opinion that the total amount which he would receive in accordance with Schedule 2 to the Act would not be more than £200; or

(b) the case of an assisted person (who is not a minor or a person suffering from mental disorder) has been settled after the commencement of proceedings without any direction of the court as to costs on terms that include provision for an agreed sum in respect of costs to be paid to the assisted person which the advocate is willing to accept in full satisfaction of the work done; or

(c) there are special circumstances where a taxation would be against the interest of the assisted person or would increase the amount payable by the Treasury;

(d) after a direction or order that the assisted person's costs shall be taxed in accordance with Schedule 2 to the Act, the advocate incurs the costs for the purpose of recovering monies payable to the Treasury,

the advocate may apply to the Chief Registrar for an assessment of the amount of the costs in respect of work done.

(4) On any assessment under paragraph (2) or (3) the Chief Registrar shall authorise the payment to the advocate of such amount as in his opinion -

(a) where the retainer of the assisted person's advocate was determined before proceedings were actually begun, or where a settlement was reached within the terms of paragraph (3)(b), is a fair remuneration for work actually and reasonably done; and

(b) in any other case, is the amount which would have been allowed to the advocate under Schedule 2 to the Act.

(5) Any advocate, if he is dissatisfied with any decision on an assessment made in accordance with paragraph (2) or (3), may make written representation to the Committee, who may allow such costs and fees in respect of the work to which the certificate relates as appears to it to represent fair remuneration according to the work actually and reasonably done or, as the case may by, is the amount which would have been allowed to the advocate under Schedule 2 to the Act.

(6) Where, in any proceedings to which an assisted person is a party (other than Privy Council proceedings) -

(a) judgement is signed in default of appearance or defence, the judgement shall contain a direction that the costs of an assisted person shall be taxed in accordance with Schedule 2 to the Act;

(b) the court gives judgement or makes a final decree or order in the proceedings, the judgement, decree or order shall include a direction (in addition to any other direction as to taxation contained in the judgement, decree or order) that the costs of any assisted person shall be so taxed;

(c) the plaintiff accepts money paid into court in accordance with Order 16 rule 11(3) of the Rules of the High Court of Justice 1952, any judgement applied for shall contain a direction that the costs of any assisted person shall be taxed in accordance with Schedule 2 to the Act.

(7) Revoked by Civil Legal Aid Order 208/99

(8) Revoked by Civil Legal Aid Order 208/99

(9) Revoked by Civil Legal Aid Order 208/99

Orders for payment of costs of unassisted party

20. (1) Where in any proceedings the court determines to make an order under section 6(1) of the Act, the court shall before doing so adjourn the proceedings for such period as it thinks fit, and shall require the unassisted party forthwith to notify the certifying officer in writing of the judgement or order of the court in the proceedings and of its intention to make an order under section 6(1) of the Act.

(2) Where the certifying officer is notified as mentioned in paragraph (1) he shall, if it appears to him that there is substantial ground for opposing the making of an order under section 6(1) of the Act, notify the Treasury who shall take such steps as are necessary to be represented in the adjourned proceedings for that purpose.

Taxation of costs

21. Revoked by Civil Legal Aid Order 208/99

Payment of costs: domestic proceedings and inquests

22. Revoked by Civil Legal Aid Order 208/99

Payments on account

23. (1) The Chief Registrar may, on a claim in writing by the advocate acting for an assisted person, authorise the payment of sums on account of profit costs incurred in connection with the proceedings to which the relevant legal aid certificate relates.

(2) A payment may only be made under paragraph (1) -

(a) when a period of 12 months has elapsed since the date on which the certificate was issued; or

(b) where a payment has, or payments have, already been made under that paragraph, when a period of 12 months has elapsed since the end of the period in respect of which that payment, or the last such payment, was made, or

(c) where -

(i) the proceedings have continued for more than 12 months, and

(ii) it appears unlikely that an order for taxation will be made within the next 12 months, and

(iii) delay in the taxation of those costs will cause hardship to the advocate.

(3) The maximum payment which may be made on a claim under paragraph (1) is 75% of the profit costs incurred.

(4) Where an advocate's retainer has been determined and another advocate (who is not a member of the same firm) is acting on behalf of the assisted person, the Chief Registrar may authorise payment of a sum on account of the original advocate's costs where the costs have not been taxed, or it appears unlikely that they will be taxed, within 6 months of the date on which the retainer was determined.

(5) The making of a payment under this regulation shall not release an advocate from any obligation under these Regulations to submit his costs for taxation or assessment on conclusion of the case.

(6) Where, after taxation or assessment, payments made under this regulation are found to exceed the final costs of the case, the advocate shall on demand repay the balance due to the Treasury.

Payments on account of disbursements

24. The Chief Registrar may, on a claim in writing by the advocate acting for an assisted person, authorise the payment of a sum on account of disbursements incurred or to be incurred in connection with the proceedings to which the relevant legal aid certificate relates.

Special provision for Privy Council proceedings

25. (1) Where it appears to an assisted person's advocate that the proper conduct of Privy Council proceedings requires the retention of counsel, such counsel shall be nominated by the advocate from the counsel eligible to represent persons in receipt of legal aid in England and Wales, subject to approval by the Committee.

(2) After considering representations made by the assisted person's advocate, the Committee may direct that a second counsel be retained.

(3) Every brief or set of instructions delivered to counsel shall include a copy of the legal aid certificate and be endorsed with the legal aid reference number, and no fee shall be marked thereon.

(4) Subject to paragraph (6), the Committee may direct that any costs not taxed in accordance with the Judicial Committee Rules be taxed by the Chief Registrar, or by such other person as the Committee may consider appropriate, in accordance with Schedule 2 to the Act, and the Chief Registrar or other person may -

(a) consult with such other persons as he may consider appropriate in order to assist him in carrying out the taxation; and

(b) disregard any scale of advocates' fees in force if he considers such scale inappropriate.

(5) An appeal against taxation of a bill of costs under paragraph (4) shall lie to the Clerk of the Rolls.

(6) The Committee may agree the costs of counsel for Privy Council proceedings either generally or specially when counsel is first retained on behalf of the assisted person.

(7) The following modifications to the Act shall have effect in relation to Privy Council proceedings -

(a) notwithstanding that a party to Privy Council proceedings or a person applying to pursue or defend such proceedings is for any reason ineligible for legal aid, or that the proceedings fall within Part II of Schedule 1 to the Act, the Committee may, if it is satisfied that there are special circumstances, grant legal aid for the whole or part of the proceedings, but in so doing shall state in its decision the special circumstances;

(b) in section 16(4), "counsel" shall be construed as including both a barrister and a solicitor qualified as an agent, provided that both are eligible to represent persons in receipt of legal aid in England and Wales.

(8) In relation to Privy Council proceedings, in these Regulations -

"advocate" includes any barrister, or solicitor qualified to act as an agent, (being a barrister or solicitor eligible to represent persons in receipt of legal aid in England and Wales) retained by an advocate for the purposes of the proceedings;

"court" or "judge" includes the Judicial Committee;

"Chief Registrar" (except in relation to the determination of the financial resources of an applicant or assisted person or of any contribution payable) includes the Registrar of the Judicial Committee.

Quorum of Legal Aid Committee

26. Two members of the Committee shall constitute a quorum for the purpose of the exercise of any functions of the Committee under these Regulations.

Revocation

27. The regulations specified in the Schedule are revoked.

Regulation 27.

SCHEDULE

REGULATIONS REVOKED

Reference	Title
GC 220/86	The Legal Aid (General) Regulations 1986.
GC 379/91	The Legal Aid (General) (Amendment) Regulations 1991.
GC 501/92	The Legal Aid (General) (Amendment) Regulations 1992.
SD 509/96	The Legal Aid (General) (Amendment) Regulations 1996.

MADE 13th March 1997

(signed by)

Members of the Legal Aid Committee

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations consolidate with minor amendments the Legal Aid (General) Regulations 1986 and subsequent amending Regulations. They transfer from the Certifying Officer to the Chief Registrar functions relating to the determination of an applicant's financial resources and the determination and recovery of any contribution payable by an assisted person.