



ST HELENA

REVISED EDITION OF THE LAWS, 2017

COURTS AND JUSTICE

LEGAL AID, ASSISTANCE AND SERVICES ORDINANCE, 2017¹

In force on the effective date for the Revised Edition of the Laws of St Helena, 2017 (15 January 2018).

This Ordinance is a consolidation under section 6(b) of the Revised Edition of the Laws Ordinance, 1999. It incorporates:

LAY ADVOCATES ORDINANCE, 1986

Ordinance 13 of 1986

In force 1 November 1986

Amended by Ordinances 15 of 1997, 8 of 2004 and 7 of 2011 (in force 1 January 2012)

No subsidiary legislation to 1 November 2017

LEGAL AID AND LEGAL SERVICES ORDINANCE, 1997

Ordinance 17 of 1997

In force 16 January 1998

Amended by Ordinances 3 of 2002 and 9 of 2007

ADMINISTRATION OF JUSTICE ORDINANCE, 2007

Ordinance 9 of 2007

In force 1 September 2007

No amendments to 1 November 2017

No subsidiary legislation to 1 November 2017

Subsidiary legislation made under the Legal Aid and Legal Services Ordinance, 1997:

LEGAL AID REGULATIONS, 2003

Legal Notice 7 of 2003

In force 1 April 2003

LEGAL AID, ASSISTANCE AND SERVICES ORDINANCE, 2017²

ARRANGEMENT OF SECTIONS

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

² Part II of this Ordinance does not apply to Ascension; see the Lay Advocates Ordinance, 2007 (Asc). References to Lay Advocates need to be read in conjunction with that Ordinance.

PART I
PRELIMINARY

1. Short title and commencement
2. Interpretation

PART II
LAY ADVOCATES

3. Appointment of Lay Advocates
4. Rights of Lay Advocates and immunity from suit
5. Obligations of Lay advocates
6. Public Solicitor to supervise Lay Advocates
7. Court may order disclosure of information

PART III
LEGAL ASSISTANCE FUND

8. Establishment of Fund
9. Constitution of Fund
10. Administration
11. Objects of the Fund
12. Powers of Trustees
13. Accounts and audit
14. Decisions of Trustees

PART IV
JUSTICES' MEETINGS

15. *Repealed*
16. Business of Annual Justices' Meeting
17. Justice Trustees

PART V
LEGAL AID

18. Scope of legal aid
19. Persons entitled to legal aid
20. Application for legal aid
21. Public Solicitor
22. Powers of Public Solicitor
23. Determination of applications
24. Applications by more than one party
25. Offences
26. Revocation of grant of certificate
27. Award of costs against aided persons
28. Contributions by successful aided persons
29. Preparation and audit of accounts

PART VI
LEGAL SERVICES

30. Legal services

31. Control of provision of legal services
32. Regulations may provide for licensed conveyancers
33. Offence of providing legal services

PART IV MISCELLANEOUS

34. Regulations

AN ORDINANCE to provide for the appointment of Lay Advocates and the Public Solicitor, to establish a Legal Assistance Fund, to regulate the provision of legal advice and assistance and legal services generally to members of the public and the granting of legal aid, to regulate non-governmental legal services; and for connected and incidental matters.

PART I PRELIMINARY

Short title and commencement

1. (1) This Ordinance may be cited as the Legal Aid, Assistance and Services Ordinance, 2017.

(2) This Ordinance comes into force on the date when the Revised Edition of the Laws of St Helena, 2017 comes into force.

Interpretation

- 2.** In this Ordinance—
- “**aided person**” means a person to whom legal aid has been or is being provided by the Public Solicitor or an assistant;
- “**Annual Justices’ Meeting**” means the meeting of Justices of the Peace held annually as required by section 11 of the Magistrates’ Court Ordinance, 2011;
- “**assistant**” means a legal practitioner, clerk or other assistant employed in the office of the Public Solicitor;
- “**certificate**” means a certificate confirming the grant of legal aid issued under section 23(1);
- “**child**” means a person under the age of 18 years;
- “**detained person**” means a person detained in due course of law in a prison or other place of lawful custody;
- “**financial year**” means the period from 1st April in any year to 31st March in the following year;
- “**Fund**” means the Legal Assistance Fund established by Part III;
- “**guardian**”, in relation to a child, means (without limiting the term) any person or persons the Public Solicitor considers can properly be appointed by a court to be the next friend or guardian *ad litem* of the child;
- “**Justice Trustee**” means a Justice of the Peace appointed by a Justices’ Meeting to be a Trustee of the Fund;
- “**Lay Advocate**” means a person appointed as a Lay Advocate under Part II;
- “**legal aid**” means aid and assistance provided under Part VI by the Public Solicitor or an assistant;
- “**Trustee**” means a Trustee of the Fund designated or appointed under this Ordinance;
- “**person**” (a) means, for the purposes of Part V, a natural person only;

(b) includes, for the purpose of Part VI, a corporate or unincorporated body;
“proceedings” means any criminal proceedings brought against an aided person, or any civil proceedings in which that person is or intends to be a party, and includes proceedings before any statutory authority empowered to exercise appellate functions;
“Public Solicitor” means the person appointed as such under section 21.

PART II LAY ADVOCATES

Appointment of Lay Advocates

3. (1) The Public Solicitor, after receiving the advice of a Justices Meeting, may appoint any fit and proper person to be a Lay Advocate.

(2) Any number of persons may hold the office of Lay Advocate simultaneously.

(3) Without affecting subsection (4), a Lay Advocate may resign office at any time by notice in writing to the Public Solicitor.

(4) The Public Solicitor, with the approval of the Governor, may remove any person from the office of Lay Advocate.

Rights of Lay Advocates and immunity from suit

4. (1) A Lay Advocate is entitled—

- (a)** to appear and be heard on behalf of any party to proceedings before any court or tribunal exercising any lawful jurisdiction in St Helena;
- (b)** to receive the co-operation and assistance of the Public Solicitor and the staff of that office with regard to any research or enquiry concerning questions of law and access to law reports and legal text books, but to the extent only that such co-operation and assistance is consistent with the responsibilities and duties of that office;
- (c)** if at any time there is no subsisting appointment to the office of Public Solicitor or if the Public Solicitor is absent from St Helena - to receive at all reasonable times the co-operation and assistance of the Attorney General’s Chambers with regard to the several matters set out above;
- (d)** to visit, at all reasonable times, any detained person who has asked to see a Lay Advocate for the purposes of obtaining legal advice; and to consult with such person in private, except in so far as such consultation would entail a risk to the security of the establishment in which the person is detained.

(2) A Lay Advocate may give advice and assistance on matters of law to any person requesting such advice.

(3) A Lay Advocate is not liable to be sued in any civil court for any act he or she does in exercise of the powers and rights or performance of the duties of the office under this Ordinance, if the act complained of was done in good faith and in a manner in all respects consistent with this Ordinance.

Obligations of Lay Advocates

- 5. (1)** A Lay Advocate must not—
- (a) charge or levy any charge or fee for services provided under section 4;
 - (b) give any advice or assistance, or appear as an advocate before any court or tribunal, in respect of any case or matter in which he or she has any personal interest which would or might conflict with the interests of the person being assisted or represented.
- (2)** Every Lay Advocate must—
- (a) take all reasonable care to ensure that the advice and assistance given to any person are founded upon an accurate understanding of the relevant law; and seek any necessary advice from the Public Solicitor’s Office for that purpose;
 - (b) keep a written record of the name of every person given advice or assistance by the Lay Advocate, together with a note of the general nature of the problem discussed and the advice given on it; and supply a copy of such record, on request, to the person advised;
 - (c) treat all information received from any person who consults the Lay Advocate in that capacity as having been given in the strictest confidence, subject to this Ordinance or any other law, except that information as to the identities of persons advised or assisted and as to the dates and times of consultations with such persons (but no further details of such consultations) may be disclosed to the Public Solicitor or to the Trustees.

Public Solicitor to supervise Lay Advocates

- 6.** Every Lay Advocate must comply with –
- (a) any lawful guidance or instructions issued from time to time by the Public Solicitor as to the performance of the duties and the exercise of the rights of a Lay Advocate; and
 - (b) any request (not being a request for the disclosure of confidential information) for information similarly issued.

Court may order disclosure of information

7. (1) The Supreme Court or a Magistrates’ Court may, subject to this section, order a Lay Advocate to disclose information to which this section relates either to the Attorney General or to any other person named in the order.

(2) This section relates to any information received by a Lay Advocate in the course of his or her duties under this Ordinance.

(3) An order must not be made under this section unless the court is satisfied that the disclosure of the information is of such urgent and compelling necessity in the public interest as to justify over-ruling the principle of confidentiality stated in section 5(2)(c).

(4) The Chief Justice may make rules to prescribe the procedure to be followed in respect of an application under this section.

PART III LEGAL ASSISTANCE FUND

Establishment of Fund

8. (1) This section establishes a charitable trust fund to be known as the “~~The~~ Legal Assistance Fund”.

(2) The Trustees of the Fund are the Public Solicitor, the Clerk of the Peace, the Chief Magistrate and at least one but not more than 3 Justice Trustees elected under section 16.

Constitution of Fund

9. (1) The Fund comprises all money received by the Trustees (whether by grant from public funds or otherwise) for the purposes of the Fund, together with all interest earned on such money and all property from time to time held by the Trustees on account of the Fund.

(2) The Trustees must cause all money belonging to the Fund, except sums required for the day to day running of the Fund, to be deposited in the Bank of St Helena Limited.

Administration

10. (1) The Trustees may appoint some fit and proper person to be the Registrar of the Fund.

(2) The Registrar, if appointed, is the clerk to the Trustees and must perform such duties as the trustees may from time to time specify in writing

Objects of the Fund

- 11.** The objects of the Fund are—
- (a)* to promote and encourage the establishment of schemes or arrangements for the dissemination of information about the law and its administration; and
 - (b)* to ensure (so far as is practicable) that legal advice and assistance is available to members of the public by whom it is sought.

Powers of Trustees

- 12.** In pursuit of the objectives of the Fund, the Trustees may from time to time, in their absolute discretion, cause any money or property of the Fund to be laid out or applied—
- (a)* in making awards to Lay Advocates, either by way of periodical honoraria or in recognition of particular work done;
 - (b)* in convening and holding meetings of persons interested or concerned in the administration of justice;
 - (c)* for the acquisition of stationery (including printing) and other equipment necessary for the effective furtherance of the objectives of the Fund;
 - (d)* in any other manner in which the Trustees are satisfied that the objects of the

Fund can be effectively advanced.

Accounts and audit

13. (1) The Trustees must cause to be kept such books, accounts, records, and minutes (in this section collectively called “accounts”) as may be necessary to maintain an accurate and complete record of the affairs of the Fund.

(2) As soon as practicable after the end of each financial year, the Trustees must cause the accounts for that year to be audited by some fit and proper person approved by a Justices’ Meeting.

(3) Upon completion of the audit, the Trustees must cause the audited accounts to be deposited in the office of the Clerk of the Peace, and notice of that deposit must be published.

(4) Any person may, at any time during the normal office hours of the Clerk of the Peace, inspect the audited accounts of the Fund for the 3 years preceding the date of the inspection.

(5) Each set of audited accounts must be placed before the Annual Justices’ Meeting next following the completion of the audit.

Decisions of Trustees

14. All decisions of the Trustees must be by a simple majority of those present and voting, but no decision is valid unless made at a meeting at which at least one half of the Trustees are present.

PART IV MANAGEMENT AND SUPERVISION OF THE FUND

Meetings of Justices

15. *Repealed*

Business of Annual Justices’ Meeting

- 16.** The Annual Justices’ Meeting must include in its business—
- (a)* deciding, within the limits of section 8(2), the number of Justice Trustees to be appointed;
 - (b)* nominating and electing the number of Justice Trustees so decided;
 - (c)* approving an auditor for the Fund;
 - (d)* receiving the audited accounts of the Fund for the previous financial year;
 - (e)* nominating, if thought appropriate, persons for appointment as Lay Advocates.

Justice Trustees

17. (1) Each Justice Trustee serves as such from the end of the Justices’ Meeting at which he or she is appointed until the beginning of the next Annual Justices’

Meeting, unless the Trustee earlier (by written notice to the Clerk of the Peace) indicates a wish to cease to act as a Justice Trustee.

(2) A retiring Justice Trustee is eligible to be re-appointed.

(3) If a Justice Trustee has given a notice as mentioned in subsection (1), the remaining Trustees may continue to act pending the appointment of a replacement Justice Trustee.

PART VI LEGAL AID

Scope of legal aid

18. Legal aid consists of—

- (a) the provision of legal advice and assistance to persons who are in need of legal advice and assistance and who request them;
- (b) representation of persons in proceedings, including all such assistance usually required in the steps preliminary or incidental to proceedings, or in negotiating and implementing a settlement or compromise to avoid or bring an end to proceedings.

Persons entitled to legal aid

19. Subject to this Ordinance, legal aid is available to any person whose disposable income and disposable capital are within the prescribed limit.

Application for legal aid

20. (1) Any person who, whether in his or her own right or in a representative capacity, wishes to be provided with legal aid must apply to the Public Solicitor.

(2) An application under subsection (1) must be made in the prescribed form and be signed by the applicant.

(3) If the applicant for legal aid is a child, the application may be made by the child's parent or guardian, but for the purposes of this Ordinance the child is deemed to be the applicant.

Public Solicitor

21. (1) The Governor may appoint a suitably qualified person to be the Public Solicitor, to provide legal services to the public in accordance with this Ordinance and any other written law.

(2) The Public Solicitor is a public officer but, in the performance of his or her duties towards clients, is not subject to the direction or control of any person or authority.

(3) Subsection (2) does not affect the jurisdiction of any court or tribunal.

- (4) The Public Solicitor may be removed from office only:
- (a) at his or her own request, or
 - (b) for inability to discharge the functions of the office (whether arising from inability of body or mind or any other cause) or for misconduct, and (in either case) with the consent of the Chief Justice.

Powers of Public Solicitor

22. If an application is made under section 20, the Public Solicitor may in the determination of it—

- (a) make any enquiries the Public Solicitor considers necessary concerning the means of the applicant (and those of the applicant's parent or guardian if the applicant is a child) and the merits of the case;
- (b) require the applicant within a period specified by the Public Solicitor to provide any information and documents the Public Solicitor requires;
- (c) take or cause to be taken any steps the Public Solicitor considers appropriate in the best interests of the applicant pending determination of the application, including obtaining an adjournment of any proceedings.

Determination of applications

23. (1) Subject to the following subsections, the Public Solicitor must grant legal aid to any person entitled to it in accordance with section 19, and must issue to the applicant a certificate in the prescribed form confirming the grant of it, and specifying any contribution due from the aided person and the terms on which it must be paid.

(2) The Public Solicitor may refuse legal aid to any person whom the Public Solicitor is satisfied has disposed of any income or capital for the purpose of satisfying section 19.

(3) Subject to subsection (4), an application may also be refused if it appears to the Public Solicitor that—

- (a) only a trivial advantage can be gained by the applicant from the proceedings or other matter in respect of which legal aid is sought;
- (b) on account of the simple nature of the proceedings or other matter, legal aid is not reasonably necessary;
- (c) there is no real merit in the claim of the applicant for which legal aid or assistance is sought, or that in the particular circumstances it would be unreasonable to grant the application.

(4) An application by a defendant in criminal proceedings must not be refused on a ground mentioned in subsection (3) if, in the opinion of the Public Solicitor, the applicant, if convicted, is likely to receive a custodial sentence.

(5) The Public Solicitor must refuse to provide legal aid to any applicant who fails without reasonable excuse (which the applicant must prove) to comply with any request for information and documents made under section 22(b).

Applications by more than one party

24. (1) If, in relation to any proceedings in which a person who has made an application under this Ordinance is or proposes to be a party, any other party makes application for legal aid, the provisions of this Ordinance apply to both parties.

- (2)** In those circumstances, the Public Solicitor may either—
- (a)* assign a separate assistant to act for each party in connection with the proceedings; or
 - (b)* in his or her discretion refuse the application for legal aid or legal assistance made by one party and assign a Lay Advocate to that party under Part II.

Offences

25. A person who furnishes any document, or supplies information, which the person knows or believes is false, for the purpose of procuring the grant of legal aid, commits an offence.

Penalty: A fine of £1,000, or imprisonment for one year, or both.

Revocation of grant of certificate

- 26.** The Public Solicitor—
- (a)* must revoke a certificate issued to an aided person under section 23(1) if the aided person has been convicted of an offence contrary to section 25; and
 - (b)* may revoke the certificate at any time on receipt of information tending to indicate that the aided person has committed such an offence,

and in either case the aided person forthwith ceases to be an aided person for the purposes of this Ordinance.

Award of costs against aided persons

27. Without affecting the general discretionary powers of a court to award costs in any proceedings, if it appears that an aided person—

- (a)* has obtained the issue of a certificate in a manner which constitutes an offence under section 25; or
- (b)* has acted improperly or unreasonably in bringing or defending the proceedings, or in the conduct of them,

the Court may make any order against the aided person regarding the costs of the Public Solicitor and, where appropriate, the costs of any other party to the proceedings, as it considers appropriate.

Contributions by successful aided persons

28. (1) Subject to the following subsections, if an aided person is successful in proceedings in which he or she is or has been a party, either wholly or in part, and in respect of which a certificate has been issued under section 23(1), a contribution is payable by the person to the Public Solicitor in an amount the equivalent of a prescribed percentage of the total sum of monies recovered or preserved for the aided person in the proceedings, whether on his or her own behalf or on behalf of a child.

(2) The Public Solicitor has and must exercise a right of lien on and deduction from any money recovered by way of contribution under subsection (1).

(3) All contributions paid or recovered under subsection (1) and all contributions paid pursuant to section 23(1) must on receipt be immediately paid by the Public Solicitor to the Financial Secretary for credit to the Consolidated Fund. The receipt of the Financial Secretary or any subordinate officer acting on his or her behalf is a sufficient discharge to the Public Solicitor and conclusive evidence of compliance with the obligations under this subsection.

(4) No contribution is payable under subsection (1) unless the total amount recovered or preserved for the aided person in the proceedings exceeds the minimum contribution prescribed.

(5) The Public Solicitor, with the consent of the Governor, may by notice in writing to the aided person, waive, either in whole or in part, payment of any contribution due under either subsection (1) or section 23(1), if the Public Solicitor is satisfied that payment or recovery of the contribution, or that part of it, will cause serious hardship to the aided person, and that in all the circumstances it is just and equitable not to enforce payment of it, or that part of it

(6) For the purposes of this section, proceedings are deemed to be successful if a sum of money is recovered or preserved for the aided person, either under an order of the court, or pursuant to a compromise or settlement reached to avoid or bring an end to such proceedings.

Preparation and audit of accounts

29. (1) The Public Solicitor must cause to be kept such books, records and accounts as are necessary to maintain an accurate and complete record of the financial affairs of the office.

(2) The Public Solicitor must, as soon as practicable after the end of every financial year and within 3 months after the end of such year, cause a statement of accounts to be prepared reflecting the financial operations of his office during the preceding year.

(3) The accounts of each financial year must be audited within 3 months of their submission for audit by a suitably qualified auditor, who must be approved by the Governor on the advice of the Financial Secretary. A copy of the audited accounts and auditor's report on them must be lodged with the Governor by the auditor as soon as practicable after the completion of the audit.

(4) A fee, as agreed between the auditor and the Financial Secretary, may be charged for an audit carried out under subsection (3).

(5) In this section "**financial year**" means the period from 1st April to 31st March.

PART VI LEGAL SERVICES

Legal services

30. (1) The Public Solicitor may provide legal services to any person who requests or requires such services.

(2) Legal services may be provided by the Public Solicitor in accordance with a scale of fees specified by the Public Solicitor by notice in the *Gazette*, after consulting the Executive Council, and with the approval of the Chief Justice.

(3) For the purpose of this Part, “**legal services**” means legal assistance and advice provided by the Public Solicitor to any person not eligible for or seeking legal aid under Part V and excludes any services provided as legal aid.

Control of provision of legal services

31. (1) Subject to subsections (2) and (3), a person provides regulated legal services if the person—

- (a) for or in expectation of gain or reward—
 - (i) gives legal advice to any person;
 - (ii) appears on behalf of any person in any court, tribunal or inquiry having jurisdiction in St Helena;
 - (iii) directly or indirectly draws or prepares any instrument relating to any property or any legal proceedings; or
- (b) holds himself or herself out (expressly or impliedly) to any other person, by the use of the description of advocate, attorney, attorney-at-law, barrister, solicitor, counsel, counsellor, law-agent, lawyer, or any other description, as being a person who is competent, qualified or ready in such capacity to give legal advice in relation to the laws of St Helena.

(2) For the purposes of subsection (1)(a)(iii), the expression “instrument” does not include—

- (a) a will or other testamentary instrument which does not contain a trust;
- (b) an agreement under hand only;
- (c) a letter or power of attorney;
- (d) a transfer of stock which does not contain a trust or limitation thereof.

(3) A person does not provide regulated legal services if the person—

- (a) acts on his or her own behalf in any matter of a legal nature;
- (b) being a public officer, draws or prepares instruments, or does any other act or thing, in the course of duty as such;
- (c) merely engrosses or copies any instrument or proceeding;
- (d) being an employee, draws up or prepares any instrument for or on behalf of his or her employer;
- (e) does any act which the person is authorised to do in accordance with regulations made under section 34;
- (f) prepares memoranda or articles of association of any company;
- (g) acts as a Lay Advocate in accordance with Part II; or
- (h) acts as the Public Solicitor in accordance with Part V.

Regulations may provide for licensed conveyancers

32. (1) The Governor in Council may by regulations provide for the appointment of licensed conveyancers for the purpose of performing such functions as may be prescribed.

(2) The regulations under subsection (1) may, without limiting the power to make them, make provision with regard to—

- (a)* the establishment of a board or body to appoint and regulate licensed conveyancers;
- (b)* training of licensed conveyancers and provisions with respect to the application and issue of licenses;
- (c)* suspension or termination of licences;
- (d)* maintaining a register of licensed conveyancers;
- (e)* professional practice, conduct and discipline of licensed conveyancers;
- (f)* professional indemnity insurance of licensed conveyancers;
- (g)* financial requirements with regard to accounting for clients' money;
- (h)* fees and other charges of licensed conveyancers.

Offence of providing legal services

33. A person who, not having a right of audience in accordance with the Courts (Rights of Audience and Enrolment) Rules, 1992, provides regulated legal services, commits an offence.

Penalty: A fine, or imprisonment for 5 years, or both.

PART IV MISCELLANEOUS

Regulations

34. The Governor in Council may make regulations for the further and better execution of this Ordinance and, without limiting this power, such regulations may provide for—

- (a)* anything which by this Ordinance is required or permitted to be prescribed;
- (b)* any application or other forms required for any of the purposes of this Ordinance;
- (c)* the form and contents of the certificate confirming the grant of legal aid;
- (d)* the deductions which may be made from an applicant's income and capital, and generally the manner in which an applicant's disposable income and capital are to be calculated for the purposes of this Ordinance;
- (e)* the contribution, by reference to a scale or otherwise, to be paid by certain aided persons, the maximum amounts of disposable income or disposable capital rendering an applicant ineligible for legal aid or legal assistance, and the minimum respective amounts regulating the grant of a certificate free of charge;
- (f)* the type or nature of any conditions which may be attached on the grant of a certificate;
- (g)* for any security, and the nature of it, to be given on the grant of a certificate by a parent or guardian who has applied on behalf of a child;
- (h)* grounds additional to or varying those specified in this Ordinance in respect of which a certificate may be refused or may or must be revoked;
- (i)* the grant of legal aid in emergency cases, and the power to waive compliance with all or any of the obligations of an applicant under this Ordinance;

- (j) the amounts which may be deducted and paid over for credit to the Consolidated Fund from monies recovered or preserved for an aided person who has been successful in proceedings, and generally the manner, by reference to a scale or otherwise, in respect of which such amounts are to be calculated;
- (k) the prescribing of any fees or other matters for the provision of legal services.

LEGAL AID, ASSISTANCE AND SERVICES ORDINANCE, 2017

LEGAL AID REGULATIONS, 2003

(Section 34)

TABLE OF CONTENTS

- 1. Citation
- 2. Interpretation
- 3. Application for certificate
- 4. Issue of certificate
- 5. Contributions
- 6. Outlays
- Schedule 1: Disposable income and capital and contribution categories
- Schedule 2: Forms
- Schedule 3: Rates of contribution payable by aided persons

Citation

- 1. These Regulations may be cited as the Legal Aid Regulations, 2003.

Interpretation

- 2. In these Regulations, unless the context otherwise requires—
“aided person” means a person who has been granted legal aid;
“disposable income” and **“disposable capital”** have the meanings respectively assigned to them in Schedule 1 to these Regulations;
“person” means a person as defined for the purposes of Parts I and II of the Ordinance.

Application for certificate

- 3. (1) Any person desiring legal aid whose disposable income and disposable capital are within the limits set out in Schedule 1 may apply for legal aid in Form 1 in Schedule 2.
- (2) An application for legal aid must contain all information and be accompanied by any documentation needed to enable the Public Solicitor to determine—
 - (a) the nature of the proceedings in relation to which legal aid is sought and the circumstances in which legal aid is required;
 - (b) the question whether it is proper that a certificate should be granted; and
 - (c) the disposable income and disposable capital of the applicant.

Issue of certificate

4. (1) Subject to regulation 5, once the Public Solicitor has approved an application for a certificate he or she must issue a certificate in the Form 2 in Schedule 2.

(2) A certificate must not relate to more than one prosecution, action, cause or matter, but may include proceedings for the enforcement of orders or agreements.

Contributions

5. (1) A person whose disposable income and disposable capital falls within Level A as set out in Schedule 1 is entitled to free legal aid but may be required to pay a contribution towards the cost of providing such aid in accordance with sub-regulations (3) and (4).

(2) A person whose disposable income and disposable capital falls within Level B as set out in Schedule 1 is entitled to legal aid but will be required to pay the prescribed contributions set out in Table 1 in Schedule 3. In addition such aided persons may be required to pay an additional contribution towards the cost of providing such aid in accordance with sub-regulations (3) and (4).

(3) The Public Solicitor on granting a certificate may require an aided person to pay a contribution towards the provision of legal aid under the authority of the certificate if the aided person is successful in any proceedings in which the person is or has been a party.

(4) The maximum amount of any contribution that an aided person may be required to pay under sub-regulation (3) is as set out in Table 2 in Schedule 3.

(5) If a fee or contribution is payable for legal aid, it must be paid in full to the Public Solicitor at a time and in a manner specified by the Public Solicitor.

Outlays

6. (1) In addition to the relevant fees and contributions payable under regulation 5, all persons who receive legal aid are liable to pay to the Public Solicitor all outlays paid by the Public Solicitor on their behalf, including court fees and the cost of overseas telephone and fax charges.

(2) The Public Solicitor may, in respect of persons whose disposable income and disposable capital falls within Level A, waive all or any of the payments required under this regulation.

SCHEDULE 1

(Regulations 3 and 5)

DISPOSABLE INCOME AND CAPITAL AND CONTRIBUTION CATEGORIES

Calculation of disposable income and disposable capital

1. (a) A person's 'disposable income' is—
 - (i) if a person is living alone - his or her annual gross income;
 - (ii) if a person is a member of a household - the total annual gross income of the household of which he or she is a member, being income over which the person exercises control whether singly or jointly with other householders.
 - (b) In the event of an action between persons residing in the same household their income is to be treated separately for the purposes of determining their disposable income.
 - (c) If a person's disposable income does not exceed £5,000 the person is eligible to make an application for legal aid.
2. A person's 'disposable capital' is the value of all the property that the person owns, less the value of any of the following if owned by the person, that is to say—
- (a) wearing apparel;
 - (b) the tools of a trade;
 - (c) household furniture and effects;
 - (d) the home if it is the person's sole place of residence; and
 - (e) a motor vehicle if it is used during the course of and in connection with his or her employment.
3. If the value of a person's disposable capital does not exceed £3,600 the person is be eligible to make an application for legal aid.

Contribution categories

4. **Level A** – means if a person's 'disposable income' does not exceed £3,600 and the person's 'disposable capital' does not exceed £2,400.
5. **Level B** – means if a persons 'disposable income' exceeds £3,600 but does not exceed £5,000 and the person's 'disposable capital' exceeds £2,400 but does not exceed £3,600.

SCHEDULE 2
(Regulations 3 and 4)

FORMS

LEGAL AID REGULATIONS, 2003

FORM 1
(Regulation 3(1))

APPLICATION FOR LEGAL AID

Ihereby apply for legal aid from the Public Solicitor in the following matter

I declare that my net disposable family income is less than £....., and that

my disposable cash or savings do not exceed £.....

* I authorise the Public Solicitor to

.....

Signature of applicant _____

Date _____

* Delete if not appropriate

LEGAL AID REGULATIONS, 2003

FORM 2
(Regulation 4(1))

CERTIFICATE OF LEGAL AID

I certify that is entitled to legal aid—

*without payment of a contribution pursuant to regulation 5; or[#]

*upon payment of a contribution towards costs at the following rate and terms

Public Solicitor

Date _____

*Delete as appropriate

SCHEDULE 3
(Regulation 5)

TABLE 1

RATE OF CONTRIBUTION PAYABLE BY AIDED PERSONS

Item	Matter	Contribution Level A	Contribution Level B
	<i>Criminal Appeals</i>		
1	Appeals against sentence	Nil	£10.00
2	Appeals against conviction	Nil	£20.00

	NB: Appeals against sentence and conviction will be charged at the rates for appeals against conviction (no accumulation of charges)		
	<i>Civil Appeals</i>		
3	All Appeals	Nil	£20
	<i>Criminal Cases/Motoring Offences</i>		
4	Plea in mitigation	Nil	£10
5	Trial	Nil	£20
	<i>Divorces</i>		
6	Uncontested	Nil	£10
7	Contested	Nil	£20
	<i>NB These charges include dealing with custody disputes — an uncontested divorce with a contested custody dispute would require a contribution at the contested rate</i>		
	<i>Ancillary Relief Connected to Divorce</i>		
8	Uncontested	Nil	£10
9	Contested	Nil	£20
	All other Civil cases (except for debt cases)		
10	Pre-action work	Nil	£5
11	Issue of proceedings	Nil	£5
12	Work done after issue of proceedings but before trial	Nil	£10
13	Trial	Nil	£20
	<i>Debt Cases</i>		
14	Up to and including issue of proceedings	Nil	£5
15	Uncontested trial	Nil	£10

	Contested trial	Nil	£20
	<i>Miscellaneous</i>		
	All non-contentious work	Nil	£10
	General advice, per consultation or attendance	Nil	£2
	Initial meeting concerning any matter (this includes first attendance at a police station or prison)	Nil	Nil

TABLE 2

PERCENTAGE RATES OF CONTRIBUTION
TOWARDS COST OF LEGAL AID BY SUCCESSFUL AIDED PERSONS

An aided person, in addition to the fees set out in Table 1, must pay, as a contribution towards the cost of supplying legal aid, the percentage set out in Column 1 of the Table of the amount recovered in Column 2 of the Table. However, no contribution is payable if the total sum recovered does not exceed £75.

Percentage Payable	Amount Recovered
5%	Not exceeding £500
10%	Exceeding £500 but not exceeding £2000
15%	Exceeding £2000
