



# **LEGAL AID IN THE FALKLAND ISLANDS**

## **THE 2017 SCHEME**





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## **THE 2017 LEGAL AID SCHEME FRAMEWORK**

**Legal Practitioners may undertake publicly funded legal work for a range of matters.**

**The Scheme covers both Criminal and Civil matters although different criteria apply.**

**The Scheme will be administered by the Head of Court and Tribunals Service.**

**It is important to note that this Scheme, as with previous Schemes, is entirely non-Statutory.**

**Legal Aid is payable directly to the Legal Representative and not to the Client.**

**The Scheme only covers proceedings in the Courts of the Falkland Islands (wherever they may sit).**



# 1. General Definitions

In the Scheme...

the term '**Legal Practitioner**' is used to mean Legal Practitioner in the Falkland Islands as set out in s.3 of the Legal Practitioners Ordinance 1988

the term '**applicant**' is used to mean the person who is seeking Legal Aid

the term '**assisted person**' means an applicant who has been granted the benefit of Legal Aid.

the '**Legal Aid Administrator**' is the Head of Court and Tribunals Service

the '**Legal Aid Fund**' is the amount set aside in the Departmental Budget for the provision of Legal Aid

the term '**Stanley**' is as defined in s.4 of the Interpretation and General Clauses Ordinance 1977



## **2.The Criminal Legal Aid Scheme**

Legal Practitioners may claim payment from the Falkland Islands Government for work done on behalf of eligible clients falling within the scope of the Legal Aid Scheme, as set out below.

There are two types of Criminal Legal Aid:

**The Criminal Advice and Assistance  
Scheme**

**and**

**The Criminal Representation  
Order Scheme**



## 2.1. The Criminal Advice and Assistance Scheme

### 2.1.1 Scope of the scheme

The **Criminal Advice and Assistance Scheme** covers the initial stages of a Police investigation into a crime or possible crime.

All persons arrested and held in custody, or volunteers attending the Police Station for interview under caution in connection with a criminal offence which is punishable by imprisonment, are entitled to **free** advice and assistance whilst at the Police Station.

The Scheme also covers the provision of up to the value of £157.41p in advice outside the Police Station to any person who has been arrested or voluntarily attended the Police Station for interview in respect of a criminal offence which is punishable by imprisonment. In complex matters, where additional time over and above the value of £157.41p may be required, legal practitioners are required to seek the prior authority of the Legal Aid Administrator to extend the period of time for advice outside the Police Station. This may be done by providing formal written representations to the Court outlining the reasons why the matter is complex and requires additional advice. **Please note**, preparation for hearing following charge or summons is to be dealt with under the Criminal Representation Scheme. Claims for work undertaken prior to obtaining a Representation Certificate that relate to preparation for Court are not payable under advice and assistance.

Where the person arrested, charged or summonsed is under 18 years of age or is otherwise in need of an appropriate adult the above provisions apply to all offences whether they are punishable by imprisonment or not.

Legal Practitioners will make a claim direct to the Legal Aid Scheme for work carried out under this Scheme. The Criminal Advice and Assistance Scheme is not means tested.

### 2.1.2 Rates of remuneration

Legal Practitioners will be reimbursed at the following rates:

Travel outside of Stanley, and waiting	£60 per hour
Advising and assisting in person	£157.41p per hour
Routine letters out	£12 each
Telephone advice to the client where there is no subsequent attendance at the Police Station	£36 per call
Routine letters in, telephone calls and e-mails	£6 each



### **2.1.3 Procedure for applying**

There is no requirement to make application under this Scheme. Claims for payment are to be made on the claim form LA1 at Annex A to the Schedule. Claims should be submitted as soon as possible after the assisted person is charged or when no further action is contemplated by the Police.

Only in exceptional circumstances should more than one claim be submitted in respect of the same investigation.



## 2.2. The Criminal Representation Order Scheme

### 2.2.1 Scope of the scheme

The **Criminal Representation Order Scheme** covers the situation where a person has been charged with a crime, or an information has been laid against a person alleging a criminal offence, and the case is going to be taken to Court.

In order for an applicant to be eligible for a Criminal Representation Order the following criteria must be met:

- a) The proceedings must be 'relevant criminal proceedings';  
and...
- b) The applicant must be financially eligible (the means test must be passed).

### 2.2.2 Relevant criminal proceedings test

Criminal proceedings shall be "relevant criminal proceedings" for the purposes of the granting of Legal Aid where a person has been charged with a criminal offence, or an information has been laid against a person alleging a criminal offence, which is to be heard in one of the Courts of the Falkland Islands and they meet one or more of the following criteria:

- a) the accused has been remanded in custody whether for trial or pending sentence;
- b) the accused has been convicted of an offence and the convicting court has indicated that it is considering the imposition of a custodial sentence;
- c) they are proceedings in the Summary Court or the Magistrate's Court where the matter is likely to be sent for trial to the Supreme Court;
- d) they are criminal proceedings in the Supreme Court;
- e) they are criminal proceedings in the Court of Appeal where the Court of Appeal has awarded Legal Aid from the date of such award;
- f) it is in the interests of justice that a Representation Order be granted.

In assessing whether it is in the interests of justice for representation to be granted, the factors taken into account will include the following:

- i. the offence is such that if proved it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of his livelihood or serious damage to his reputation;
- ii. the determination of the case may involve consideration of a substantial question of law;



- iii. the accused may be unable to understand the proceedings or to state his own case because of his inadequate knowledge of English, mental illness or other mental or physical disability;
- iv. the nature of the defence is such as to involve the tracing and interviewing of witnesses or expert cross-examination of a witness for the prosecution;
- v. it is in the interests of someone other than the accused that the accused be represented.

### 2.2.3 Financial eligibility (The Means Test)

In order to assess whether the applicant is financially eligible it is necessary to assess the Applicant's **relevant income** and **relevant capital**.

### 2.2.4 Financial eligibility definitions

For the purposes of the scheme...

**'Relevant income'** means gross income less allowable housing costs and less any allowances given for a spouse or partner and/or children.

**'Gross income'** means all income of the applicant and any partner to include that payable from employment, investments, rental, or any other way, whether in the Falkland Islands or abroad.

**'Housing costs'** means payments made under a mortgage or formal tenancy agreement where living independently, or where it is evidenced in writing if living with parents or family.

**'Allowable housing costs'** are the reasonable housing costs actually being paid up to a maximum of £900 per calendar month.

**'Couple'** means with a partner.

**'Partner'** means one of a married couple, one of an unmarried couple, or one of a civil partnership; whether the partner is of the same or opposite sex.

**'Unmarried couple'** means two persons who habitually live together in a relationship with some or all of the characteristics of a marriage or a civil partnership.

**'Child'** means any person under the age of 16 or under the age of 18 who is in full-time education and who is the natural child of the applicant or the applicant's spouse or partner or is treated as a child of the family and resides with the applicant. It also means any child of a former relationship who does not live with the applicant but to whom the applicant contributes regular periodical payments for their maintenance.

**'Relevant capital'** means any capital belonging to the applicant or partner (to include all savings, investments, shares, property and other valuable items with a single item value in excess of £1000) excluding the value of any equity in the



applicant's principal private dwelling house (up to £200,000), and excluding the value of the applicant's main motor vehicle (up to £5000).

**'Allowances given for spouse/partner and/or children'** are the amounts allowed for the applicant having a partner and/or children and are set out as follows:

- For a partner £2600 per annum;
- For children living with the applicant or in full-time education £1100 per annum for the first child and £550 per annum for each child thereafter up to a maximum of 5 children; or, in the case of children who do not live with the applicant nor are in full-time education, the lesser of the actual amount of maintenance paid or £1100 per annum for the first child and £550 per annum for each child thereafter up to a maximum of 5 children.

In cases where the spouse or partner is the other party or one of the other parties to the case or potential case the applicant will be assessed as a single person.

**'Welfare allowances'** means any of: Welfare Assistance; Attendance Allowance; Rent Rebate; Service Charge Rebate; Working Credits; Childcare Credits; and Winter Fuel Allowance.

### 2.2.5 Eligibility

If an applicant has more than £10,500 in relevant capital they are NOT eligible.

If an applicant is eligible in respect of relevant capital their eligibility in respect of relevant income and the extent of any contributions to be made, if any, will be assessed in accordance with the following table.

### 2.2.6 Income eligibility

<b>Relevant income of the applicant (£) Per annum</b>	
<b>A person who is in receipt of Welfare Allowances made by Social Services or who is on the Employment Programme or Entry to Employment Programme</b>	<b>Eligible No contribution</b>
<b>Under 10,500</b>	<b>Eligible No contribution</b>
<b>10,500 to 13,000</b>	<b>Eligible Contribution of 10% subject to a maximum contribution of £750</b>



<b>13,001 to 16,000</b>	<b>Eligible</b> <b>Contribution of 25% subject to a maximum contribution of £1,000</b>
<b>16,001 to 18,500</b>	<b>Eligible</b> <b>Contribution of 40% subject to a maximum contribution of £1,500</b>
<b>18,501 or above</b>	<b>Not eligible</b>

### **Calculation of eligibility on the basis of a variable income**

Where an applicant has a variable income, it is conceded that it may be more difficult to provide to the Court an accurate picture of their earnings based solely upon three months' wage slips. It is however still incumbent upon the applicant to satisfy the Court that they are financially eligible for legal aid. Practitioners are asked to ensure that sufficient documentation is provided to the Court, along with a full explanation as to the applicant's financial situation, to ensure that the appropriate assessment can be made. It may be appropriate to consider providing details of earnings from the previous annum, accompanied by details of earnings for this annum to date, to allow a realistic assessment of income to take place.

In all cases where the applicant cannot provide sufficient documentary evidence full explanation should be made to the Court at the time of application. The Legal Aid Administrator, the Senior Magistrate and the Chief Justice retain a discretion to consider the award of Legal Aid in certain circumstances, (see 2.2.10 for further detail). Should you wish to invite the Court to exercise its discretion in cases where income is variable or difficult to quantify, you are requested to provide as full income details as possible, along with the reasons why the applicant cannot provide further details and the reasons why you wish the Court to consider exercising its discretion at this time.

#### **2.2.7 What the Criminal Representation Order will cover**

The Criminal Representation Order will cover all work reasonably carried out by the Legal Practitioner in order to investigate and prepare the case for hearing and represent the client at court.

The Criminal Representation Order will **not** cover the cost of the following expenditure unless prior written authority for the expenditure has been given by the Legal Aid Administrator.

The cost of:

- a) obtaining any Opinion or Advice of Counsel or any Legal Practitioner resident overseas;



- b) representation by Counsel or any Legal Practitioner resident overseas;
- c) expert witnesses or reports by experts (including medical reports);
- d) travel, subsistence and accommodation overseas;
- e) time spent by a Legal Practitioner in serving any document or process;
- f) any advertisement in any newspaper or periodical;
- g) the attendance of any witness or the use of an interpreter for any witness;
- h) any proceedings in a Courts Martial.

### 2.2.8 Rates of remuneration

Legal Practitioners will be reimbursed at the following rates:

Travel outside of Stanley (paid only with the prior authorisation of the Legal Aid Administrator) and waiting	£60 per hour
Preparation, attendance and advocacy	£157.41p per hour
Routine letters out	£12 each
Routine letters in, telephone calls and e-mails	£6 each

### 2.2.9 Procedure for applying

For all matters, an application for Legal Aid should be submitted and a Criminal Representation Order obtained before work commences.

Work undertaken prior to the grant of Legal Aid will not be paid from public funds, unless undertaken as a matter of exceptional urgency, and justified when making the application. If the reasons for undertaking work prior to grant are accepted by the Legal Aid Administrator, the certificate will be back-dated to cover the work undertaken prior to the date of grant.

Application should be made:

- a) By completing and signing the application form LA2 at Annex B to the Schedule.
- b) By completing and signing the Means Form, LAM at Annex C to the Schedule together with proof of the applicant's (and spouse/partner's) income, capital, housing costs and number of children. This should be evidenced by:



- i. copies of at least three months' pay slips and/or similar evidence of all income,
- ii. a copy of a mortgage statement or tenancy agreement or bank statement showing housing costs,
- iii. a declaration on the form as to children for whom an allowance is claimed;
- iv. copies of bank statements to support the declaration on savings and capital (both in the Falkland Islands and overseas).

**Please note that a failure to provide this information may delay the grant of Legal Aid.**

Claims for payment are to be made on the claim form LA3 at Annex B to the Schedule.

#### **2.2.10 Retained Discretion in respect of Criminal Legal Aid**

In addition to the above the Legal Aid Administrator, the Senior Magistrate and the Chief Justice retain a discretion to act in the following ways:

- a) To grant Legal Aid on such terms as to contribution or otherwise that he thinks fit in the following cases:
  - i. Where in the view of the Senior Magistrate or in the opinion of the Chief Justice the case raises a point of fundamental public importance which is worthy of consideration by the Court.
  - ii. Where the case involves a challenge or declaration as to the effect of the Constitution in relation to the fundamental rights and freedoms of the individual unless such a case is declared to be frivolous or vexatious by the Chief Justice or Senior Magistrate.
  - iii. Where in the view of the Senior Magistrate or in the opinion of the Chief Justice a person who is in the Falkland Islands is in need of legal representation, advice or assistance, and whose means are such that within the context and circumstances of the particular case he cannot reasonably be expected to finance all or some part of his legal costs, and the interests of justice demand that such person is afforded the benefit of Legal Aid.
- b) To limit any grant of Legal Aid on financial or other grounds or to specify the purposes for which the Legal Aid granted is to be used.
- c) To amend or withdraw any Legal Aid that has been granted or require repayment of any monies expended where there has been an attempt on the



part of the assisted person or their Legal Practitioner to mislead or misuse the scheme or where the assisted person or their practitioner have acted unreasonably in the way they have pursued the case or where otherwise the interests of justice so demand.

- d) When assessing the total value of the contribution payable by an assisted person in any case to waive all or any part of such contributions as shall seem appropriate having regard to all the circumstances of the case, including (but not limited to) the financial and other circumstances of the assisted person, the outcome of the case and, if applicable, any sentence imposed on the assisted person.
- e) If the applicant is subsequently acquitted of all the charges against him or if the case is entirely discontinued to return any or all contributions made by the assisted person and/or order that no further contributions are due from him. Such a discretion will, save for in wholly exceptional circumstances, be exercised in accordance with any direction given by the Court of trial. In assessing whether to make such an order the Court will consider the conduct of the applicant and such other circumstances as the Court considers to be relevant, in the light of the presumption that any such contribution should be returned or waived.



### **3. The Civil Legal Aid Scheme**

Legal Practitioners may claim payment by the Falkland Islands Government for work done on behalf of eligible clients falling within the scope of the Legal Aid Scheme, as set out below.

There are two types of Civil Legal Aid.

**The Civil Advice and Assistance Order  
Scheme**

**and**

**The Civil Representation Order  
Scheme**



## 3.1. The Civil Advice and Assistance Order Scheme

### 3.1.1 Scope of the scheme

The **Civil Advice and Assistance Order Scheme** covers initial advice provided to an individual in respect of *most* legal matters or issues affecting him or her arising in or relating to the Falkland Islands and not the subject of proceedings outside the Falkland Islands. It includes reasonable time spent by a Legal Practitioner on work associated with the provision of such advice, including where appropriate assisting with the making of an application for a Representation Order (see below).

In order for an applicant to be eligible for a Civil Advice and Assistance Order the following criteria must be met:

- a) The Advice and Assistance must be provided for a legal matter which is not excluded under the Scheme;  
  
and...
- b) The applicant must be financially eligible (the means test must be passed).

### 3.1.2 Excluded matters

The scheme excludes:

- a) any advice given or time spent by a Legal Practitioner relating to:
  - i. conveyancing transactions;
  - ii. deeds or documents dealing with changes of name;
  - iii. defamation;
  - iv. the winding up of a deceased's estate or...
- b) the preparation of wills except where the applicant:
  - i. is 60 years of age or more; or
  - ii. is a spouse who is separated and is living apart from his or her spouse and has commenced or is considering the commencement of matrimonial proceedings; or
  - iii. has been given a terminal diagnosis by a medical practitioner which is evidenced in writing by that medical practitioner; or...
- c) the preparation of an application for planning permission or by-laws or building regulation consent.



### 3.1.3 Financial eligibility (The Means Test)

In order to assess whether the applicant is financially eligible it is necessary to assess the Applicant's **relevant income** and **relevant capital**.

### 3.1.4 Financial eligibility definitions

For the purposes of the scheme...

**'Relevant income'** means gross income less allowable housing costs and less any allowances given for a spouse or partner and/or children.

**'Gross income'** means all income of the applicant and any partner to include that payable from employment, investments, rental, or any other way, whether in the Falkland Islands or abroad.

**'Housing costs'** means payments made under a mortgage or formal tenancy agreement where living independently, or where it is evidenced in writing if living with parents or family.

**'Allowable housing costs'** are the reasonable housing costs actually being paid up to a maximum of £900 per calendar month.

**'Couple'** means with a partner.

**'Partner'** means one of a married couple, one of an unmarried couple, or one of a civil partnership; whether the partner is of the same or opposite sex.

**'Unmarried couple'** means two persons who habitually live together in a relationship with some or all of the characteristics of a marriage or a civil partnership.

**'Child'** means any person under the age of 16 or under the age of 18 who is in full-time education and who is the natural child of the applicant or the applicant's spouse or partner or is treated as a child of the family and resides with the applicant. It also means any child of a former relationship who does not live with the applicant but to whom the applicant contributes regular periodical payments for their maintenance.

**'Relevant capital'** means any capital belonging to the applicant or partner (to include all savings, investments, shares, property and other valuable items with a single item value in excess of £1000) excluding the value of any equity in the applicant's principal private dwelling house (up to £200,000), and excluding the value of the applicant's main motor vehicle (up to £5000).

**'Allowances given for spouse/partner and/or children'** are the amounts allowed for the applicant having a partner and/or children and are set out as follows:

- For a partner £2600 per annum;
- For children living with the applicant or in full-time education £1100 per annum for the first child and £550 per annum for each child thereafter up to a



maximum of 5 children; or, in the case of children who do not live with the applicant nor are in full-time education, the lesser of the actual amount of maintenance paid or £1100 per annum for the first child and £550 per annum for each child thereafter up to a maximum of 5 children.

In cases where the spouse or partner is the other party or one of the other parties to the case or potential case the applicant will be assessed as a single person.

**‘Welfare allowances’** means any of: Welfare Assistance; Attendance Allowance; Rent Rebate; Service Charge Rebate; Working Credits; Childcare Credits; and Winter Fuel Allowance.

### 3.1.5 Eligibility

If an applicant has more than £10,500 in relevant capital they are NOT eligible.

If an applicant is eligible in respect of relevant capital their eligibility in respect of relevant income and the extent of any contributions to be made, if any, will be assessed in accordance with the following table.

### 3.1.6 Income eligibility

<b>Relevant income of the applicant (£) Per annum</b>	
<b>A person who is in receipt of Welfare Allowances made by Social Services or who is on the Employment Programme or Entry to Employment Programme</b>	<b>Eligible</b> <b>No contribution</b>
<b>Under 10,500</b>	<b>Eligible</b> <b>No contribution</b>
<b>10,500 to 13,000</b>	<b>Eligible</b> <b>Contribution of 10% subject to a maximum contribution of £750</b>
<b>13,001 to 16,000</b>	<b>Eligible</b> <b>Contribution of 25% subject to a maximum contribution of £1,000</b>
<b>16,001 to 18,500</b>	<b>Eligible</b> <b>Contribution of 40% subject to a maximum contribution of £1,500</b>



<b>18,501 or above</b>	<b>Not eligible</b>
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### Calculation of eligibility on the basis of a variable income

Where an applicant has a variable income, it is conceded that it may be more difficult to provide to the Court an accurate picture of their earnings based solely upon three months' wage slips. It is however still incumbent upon the applicant to satisfy the Court that they are financially eligible for legal aid. Practitioners are asked to ensure that sufficient documentation is provided to the Court, along with a full explanation as to the applicant's financial situation, to ensure that the appropriate assessment can be made. It may be appropriate to consider providing details of earnings from the previous annum, accompanied by details of earnings for this annum to date, to allow a realistic assessment of income to take place.

In all cases where the applicant cannot provide sufficient documentary evidence full explanation should be made to the Court at the time of application.

#### 3.1.7 What the Civil Advice and Assistance Order Scheme will cover

The Civil Advice and Assistance Order Scheme will cover the provision of advice and assistance to those eligible normally up to a maximum of two hours. The scheme is not intended to cover the cost of any representation.

In addition the following will apply:

- 1) Unless the Legal Practitioner is granted prior authority, where he is acting for a petitioner in divorce, nullity or judicial separation proceedings, the maximum inclusive fee which is payable under the Scheme will be £314.82p. Where the Legal Practitioner is acting for a respondent, unless prior authority is obtained, the maximum inclusive fee is £157.41p and, except in the most exceptional circumstances, assistance under this Scheme will not be available in respect of defended divorce, nullity or judicial separation proceedings.
- 2) Unless the Legal Practitioner is granted prior authority, the maximum fee which will be paid under the Scheme for preparing a will shall be £157.41p.

#### 3.1.8 Rates of Remuneration

Legal Practitioners will be reimbursed at the following rates:

Preparation and attendance	£157.41p per hour
Routine letters out	£12 each
Routine letters in, e-mails and telephone calls	£6 each



### 3.1.9 Procedure for applying

Up to two hours advice (or the equivalent of time, letters and calls) can be given without obtaining prior authority.

After this prior authority must be obtained for any further work to be carried out.

Work undertaken (in excess of two hours) prior to the grant of Legal Aid will not be paid from public funds, unless undertaken as a matter of exceptional urgency, and justified when submitting a claim for payment.

All applications should be made:

- a) By completing and signing the application form LA4 at Annex D to the Schedule.
- b) By completing and signing the Means Form, LAM in Annex C to the Schedule.

Where work in excess of 2 hours has been or is to be undertaken:

- a) Provide proof of the applicant's (and spouse/partner's) income, capital, housing costs and number of children. This should be evidenced by:
  - i) copies of at least three months' pay slips and/or similar evidence of all income,
  - ii) a copy of a mortgage statement or tenancy agreement or bank statement showing housing costs,
  - iii) a declaration on the form as to children for whom an allowance is claimed;
  - iv) copies of bank statements to support the declaration on savings and capital (both in the Falkland Islands and overseas).

**Please note that a failure to provide this information may delay the grant of Legal Aid.**

Claims for payment are to be made on the claim form LA5 at Annex D to the Schedule.



## **3.2. The Civil Representation Order Scheme**

### **3.2.1 Scope of the Scheme**

Representation is provided, in respect of relevant proceedings which may be or have been commenced in any court in the Falkland Islands, to any individual who may be or is a party to such proceedings or whose interests are likely to be affected by those proceedings.

There are two kinds of Civil Representation Orders:

- Automatic Civil Representation Order
- Standard Civil Representation Order

### **3.2.2 Automatic Civil Representation Order**

Civil Legal Aid will be granted without reference to means and without any contribution being payable where the proceedings involve:

- a) the wardship of a child, and where the applicant is the child's parent or guardian or otherwise has parental responsibility for the child;
- b) any application made under Part 4 of the Children's Ordinance 2014 where the applicant is one or both of the child's parents or guardian or otherwise has parental responsibility for the child;
- c) in any case in the Coroner's Court where an Inquest is to be held into the death of a child and where the applicant is one or both of the child's parents or guardian or otherwise has parental responsibility for the child;
- d) where the applicant is the subject of any proceedings in the Mental Health Tribunal.

### **3.2.3 Standard Civil Representation Order**

In order to be eligible for a Standard Civil Representation Order the following criteria must be met:

- a) The proceedings must be 'relevant proceedings';
- b) The applicant must be financially eligible (must pass the means test);
- c) The case must pass the Merits Test.

### **3.2.4 Relevant proceedings for which a Civil Representation Order may be granted**



For the purposes of the scheme, 'relevant proceedings' means any civil proceedings (and family proceedings), other than:

- a) defamation proceedings;
- b) proceedings related to breach of copyright, patent or trademark;
- c) admiralty proceedings;
- d) proceedings arising out of or in connection with any arbitration or representation in arbitration proceedings;
- e) proceedings for the winding up or dissolution of any company or its restoration to the register;
- f) any application for probate or letters of administration of an estate of any deceased person;
- g) any proceedings of a criminal or quasi criminal nature instituted by the assisted person;
- h) except with the prior consent of the Legal Aid Administrator, the defence of any petition for divorce, nullity or judicial separation, or any cross-petition for divorce, nullity or judicial separation (this exception does not exclude from the scheme any proceedings for ancillary relief or custody of any child arising out of proceedings for divorce or judicial separation);
- i) except with the prior consent of the Legal Aid Administrator, any proceedings in any court relating to the recovery of any debt (or property) of an amount or value less than £5,000;
- j) proceedings brought by the assisted person for enforcement of any mortgage or charge;
- k) except with the prior consent of the Legal Aid Administrator proceedings brought by the assisted person for possession of any premises;
- l) Court Martial proceedings or any proceedings under any provision of any Act relating to the discipline or Her Majesty's armed forces;
- m) except with the prior consent of the Legal Aid Administrator any proceedings by way of appeal from a decision or order of a court in civil proceedings;
- n) the bringing of proceedings involving the making of a prohibition order under the provisions of the Licensing Ordinance;
- o) any other licensing matters;
- p) except with the prior consent of the Legal Aid Administrator, representation before the judge on a contested application for ancillary relief in matrimonial



proceedings (on an application for that consent, copies of all affidavits and exhibits thereto should be submitted);

- q) except with the prior consent of the Legal Aid Administrator, any personal injury claim which arises from an accident in the workplace and which would otherwise be covered by the provisions of the Workmens' Compensation Scheme. Consent will usually not be given unless the amount likely to be recoverable through the Court is substantially greater than that recoverable under the said Compensation Scheme;
- r) except with the consent of the Legal Aid Administrator, any proceedings in the Tax Appeal Tribunal or any other Tribunal established by Law;
- s) except with the consent of the Legal Aid Administrator any proceedings in the Summary Court under the Employment Protection Ordinance;
- t) any proceedings under the Electoral Ordinance;
- u) any relator action.

### 3.2.5 Financial eligibility (The Means Test)

In order to assess whether the applicant is financially eligible it is necessary to assess the Applicant's **relevant income** and **relevant capital**.

### 3.2.6 Financial eligibility definitions

For the purposes of the scheme...

**'Relevant income'** means gross income less allowable housing costs and less any allowances given for a spouse or partner and/or children.

**'Gross income'** means all income of the applicant and any partner to include that payable from employment, investments, rental, or any other way, whether in the Falkland Islands or abroad.

**'Housing costs'** means payments made under a mortgage or formal tenancy agreement where living independently, or where it is evidenced in writing if living with parents or family.

**'Allowable housing costs'** are the reasonable housing costs actually being paid up to a maximum of £900 per calendar month.

**'Couple'** means with a partner.

**'Partner'** means one of a married couple, one of an unmarried couple, or one of a civil partnership; whether the partner is of the same or opposite sex.

**'Unmarried couple'** means two persons who habitually live together in a relationship with some or all of the characteristics of a marriage or a civil partnership.



**‘Child’** means any person under the age of 16 or under the age of 18 who is in full-time education and who is the natural child of the applicant or the applicant’s spouse or partner or is treated as a child of the family and resides with the applicant. It also means any child of a former relationship who does not live with the applicant but to whom the applicant contributes regular periodical payments for their maintenance.

**‘Relevant capital’** means any capital belonging to the applicant or partner (to include all savings, investments, shares, property and other valuable items with a single item value in excess of £1000) excluding the value of any equity in the applicant’s principal private dwelling house (up to £200,000), and excluding the value of the applicant’s main motor vehicle (up to £5000).

**‘Allowances given for spouse/partner and/or children’** are the amounts allowed for the applicant having a partner and/or children and are set out as follows:

- For a partner £2600 per annum;
- For children living with the applicant or in full-time education £1100 per annum for the first child and £550 per annum for each child thereafter up to a maximum of 5 children; or, in the case of children who do not live with the applicant nor are in full-time education, the greater of the actual amount of maintenance paid or £1100 per annum for the first child and £550 per annum for each child thereafter up to a maximum of 5 children.

In cases where the spouse or partner is the other party or one of the other parties to the case or potential case the applicant will be assessed as a single person.

**‘Welfare allowances’** means any of: Welfare Assistance; Attendance Allowance; Rent Rebate; Service Charge Rebate; Working Credits; Childcare Credits; and Winter Fuel Allowance.

### 3.2.7 Eligibility

If an applicant has more than £10,500 in relevant capital they are NOT eligible.

If an applicant is eligible in respect of relevant capital their eligibility in respect of relevant income and the extent of any contributions to be made, if any, will be assessed in accordance with the following table.

### 3.2.8 Income eligibility

<b>Relevant income of the applicant (£) Per annum</b>	
<b>A person who is in receipt of Welfare Allowances made by Social Services or who is on the Employment Programme or Entry to Employment Programme</b>	<b>Eligible No contribution</b>



<b>Under 10,500</b>	<b>Eligible</b> <b>No contribution</b>
<b>10,500 to 13,000</b>	<b>Eligible</b> <b>Contribution of 10% subject to a maximum contribution of £750</b>
<b>13,001 to 16,000</b>	<b>Eligible</b> <b>Contribution of 25% subject to a maximum contribution of £1,000</b>
<b>16,001 to 18,500</b>	<b>Eligible</b> <b>Contribution of 40% subject to a maximum contribution of £1,500</b>
<b>18,501 or above</b>	<b>Not eligible</b>

### **Calculation of eligibility on the basis of a variable income**

Where an applicant has a variable income, it is conceded that it may be more difficult to provide to the Court an accurate picture of their earnings based solely upon three months' wage slips. It is however still incumbent upon the applicant to satisfy the Court that they are financially eligible for legal aid. Practitioners are asked to ensure that sufficient documentation is provided to the Court, along with a full explanation as to the applicant's financial situation, to ensure that the appropriate assessment can be made. It may be appropriate to consider providing details of earnings from the previous annum, accompanied by details of earnings for this annum to date, to allow a realistic assessment of income to take place.

In all cases where the applicant cannot provide sufficient documentary evidence full explanation should be made to the Court at the time of application. The Legal Aid Administrator, the Senior Magistrate and the Chief Justice retain a discretion to consider the award of Legal Aid in certain circumstances, (see 3.2.13 for further detail). Should you wish to invite the Court to exercise its discretion in cases where income is variable or difficult to quantify, you are requested to provide as full income details as possible, along with the reasons why the applicant cannot provide further details and the reasons why you wish the Court to consider exercising its discretion at this time.

### **3.2.9 The Merits Test**

In order to be eligible the case must also pass the Merits Test. That is, it must be considered reasonable in all the circumstances for the case to be brought and or defended.



In assessing whether a Civil Representation Order should be granted, the factors taken into account will include the following:

- a) Whether there is a reasonable chance of winning or defending the case;
- b) The degree of prospects of success;
- c) Whether there is a sufficient cost benefit in pursuing the case;
- d) What a reasonable privately paying client would do in the same circumstances;
- e) Whether bringing or defending the case is justified in light of the time and money required to win;
- f) The effect and potential consequences that the result of the case might have on the applicant, their reputation, their financial position or their family life;
- g) Whether there are alternative methods of obtaining settlement or adjudication available.

The Legal Practitioner instructed will be under a duty to keep the case under review at all times and to advise if circumstances are such that the prospects of winning or defending are substantially diminished.

### **3.2.10 What the Civil Representation Order will cover**

The Civil Representation Order will cover all work reasonably carried out by the Legal Practitioner in order to investigate and prepare the case for hearing and represent the client at Court.

The Civil Representation Order will **not** cover the cost of the following unless prior written authority for the expenditure has been given by the Legal Aid Administrator.

The cost of:

- a) obtaining any Opinion or Advice of Counsel or any Legal Practitioner resident overseas;
- b) representation by Counsel or any Legal Practitioner resident overseas;
- c) expert witnesses or reports by experts (including medical reports);
- d) travel, subsistence and accommodation overseas;
- e) time spent by a Legal Practitioner in serving any document or process;
- f) any advertisement in any newspaper or periodical;
- g) the attendance of any witness or the use of an interpreter for any witness.



### 3.2.11 Rates of remuneration

Legal Practitioners will be reimbursed at the following rates:

Travel outside of Stanley (paid only with the prior authorisation of the Legal Aid Administrator) and waiting	£60 per hour
Preparation, attendance and advocacy	£157.41p per hour
Routine letters out	£12 each
Routine letters in, telephone calls and e-mails	£6 each

### 3.2.12 Procedure for applying

For all matters, an application for Legal Aid should be submitted and a Civil Representation Order obtained before work commences.

Work undertaken prior to the grant of Legal Aid will not be paid from public funds, unless undertaken as a matter of exceptional urgency, and justified when submitting a claim for payment.

Application should be made:

- a) For a Civil Representation Order (Civil and Family) by completing and signing the application form LA6 at Annex E to the Schedule.
- b) For a Civil Representation Order (Children's Ordinance) by completing and signing the application form LA7 at Annex E to the Schedule
- c) By completing and signing the Means Form, LAM in Annex C to the Schedule together with proof of the applicant's (and spouse/partner's) income, capital, housing costs and number of children. This should be evidenced by:
  - i) copies of at least three months' pay slips and/or similar evidence of all income,
  - ii) a copy of a mortgage statement or tenancy agreement or bank statement showing housing costs,
  - iii) a declaration on the form as to children for whom an allowance is claimed;
  - iv) copies of bank statements to support the declaration on savings and capital (both in the Falkland Islands and overseas).



**Please note that a failure to provide this information may delay the grant of Legal Aid.**

Claims for payment are to be made on the claim form LA8 at Annex E to the Schedule.

### **3.2.13 Retained Discretion in respect of Civil Legal Aid**

In addition to the above the Legal Aid Administrator, the Senior Magistrate and the Chief Justice retain a discretion to act in the following ways:

- a) To grant Legal Aid on such terms as to contribution or otherwise that he thinks fit in the following cases:
  - i. Where in the view of the Senior Magistrate or in the opinion of the Chief Justice the case raises a point of fundamental public importance which is worthy of consideration by the Court
  - ii. Where the case involves a challenge or declaration as to the effect of the Constitution in relation to the fundamental rights and freedoms of the individual unless such a case is declared to be frivolous or vexatious by the Chief Justice or Senior Magistrate
  - iii. Where in the view of the Senior Magistrate or in the opinion of the Chief Justice a person who is in the Falkland Islands is in need of legal representation, advice or assistance and whose means are such that within the context and circumstances of the particular case he cannot reasonably be expected to finance all or some part of his legal costs, and the interests of justice demand that such person is afforded the benefit of Legal Aid.
- b) To limit any grant of Legal Aid on financial or other grounds or to specify the purposes for which the Legal Aid granted is to be used.
- c) To amend or withdraw any Legal Aid that has been granted or require repayment of any monies expended where there has been an attempt on the part of the assisted person or their Legal Practitioner to mislead or misuse the scheme or where the assisted person or their practitioner have acted unreasonably in the way they have pursued the case or where otherwise the interests of justice so demand.
- d) When assessing the total value of the contribution payable by an assisted person in any case to waive all or any part of such contributions as shall seem appropriate having regard to all the circumstances of the case, including (but not limited to) the financial and other circumstances of the assisted person, the outcome of the case and, if applicable, any judgement made for or against the assisted person.





## 4. Administration of the Scheme

### 4.1. General Terms and Conditions

#### 4.1.1 Disbursements

The general principle of the scheme is that any disbursement must be first met from the legal practitioner, with the amount then being re-claimed from the Legal Aid fund at the point of payment of the final bill. This is subject to the following exceptions:

- (a) Where the amount of any disbursement exceeds £500, the legal practitioner shall provide to the Legal Aid Administrator at the time of submitting the final bill at least three quotes in order to satisfy the Legal Aid Administrator that the most cost effective quote has been used. Should the lowest quote not have been used, this must be justified, and payment will then only be made in exceptional circumstances. This sub-paragraph shall not apply to payments made to counsel, or to any other disbursement where the Legal Aid Administrator has in advance granted prior authority to incur a disbursement in circumstances where fewer than three quotes have been obtained.
- (b) Where a disbursement requires payment to be made overseas, then, subject to sub-paragraph (a) above, upon application by the legal practitioner payment will be made directly from the Legal Aid fund at the time the disbursement falls due.
- (c) No payment will be allowed in respect of any overseas money transfer fee (in light of (b) above).
- (d) Where any disbursement exceeds £1500 then, subject to sub-paragraph (a) above, the legal practitioner may make application to the Legal Aid fund for payment to be made directly from the Legal Aid fund at the time the disbursement falls due. Such payment will be authorised where the Legal Aid Administrator is satisfied that to do so is fair and reasonable in all the circumstances of the case.

#### 4.1.2 Payments of Costs and Expenses

- 1) Within 3 months of the conclusion of each matter dealt with under the Scheme the Legal Practitioner should submit a claim to the Legal Aid Administrator using the following forms and in accordance with the following procedure:



Claim for work done under the Criminal Advice and Assistance Scheme	Form LA1	Annex A
Claim for work done under a Criminal Representation Order	Form LA3	Annex B
Claim for work done under the Civil Advice and Assistance Scheme	Form LA5	Annex D
Claim for work done under a Civil Representation Order	Form LA8	Annex E

- a) Where an assisted person has an interest in the final bill (e.g. where the assisted person has to pay a percentage of the total bill), prior to submission of the claim, the Legal Practitioner is to serve a copy of the claim on the assisted person and advise them of their right to make representations to the Legal Aid Administrator on the final bill and advise him that he or she should inform the Legal Practitioner if they wish to exercise that right within 14 days.
  - b) After those 14 days, the Legal Practitioner should submit their detailed bill of costs to the Senior Magistrate for assessment. Where applicable (i.e. where the assisted person has an interest in the final bill), the bill should contain a signed statement by the Legal Practitioner that the assisted person has been served with a copy of the bill and has/has not indicated that they wish to make representations.
  - c) If the assisted person with a financial interest in the final bill wishes to make representations, they will be able to make those to the Legal Aid Administrator in writing within 21 days of being notified by the Court.
  - d) If the assisted person has no financial interest in the final account, or if there are no representations from the assisted person, the Legal Aid Administrator will provisionally assess the claim. The Legal Aid Administrator may call for the practitioner's file at any time during assessment.
  - e) If the bill is reduced, the Legal Practitioner can within 21 days make further representations to the Legal Aid Administrator in writing. Should this not result in agreement then there will be a costs appeal hearing before the Senior Magistrate which can be heard either on paper or in person.
  - f) There will also be a costs appeal hearing if the assisted person with an interest in the bill requests it.
  - g) There is no further appeal after final assessment following a costs appeal hearing by the Senior Magistrate.
- 2) The final bill should include the following details:



- a) the name of the client on whose behalf or to whom the Legal Practitioner has provided representation, advice or assistance, and a copy of the relevant Legal Aid Certificate;
  - b) the result of the case;
  - c) the number of hours during which the Legal Practitioner has been engaged on work relating to the client's matter with sufficient breakdown of those hours and with sufficient description of the work done so as to allow a reasonable assessment of the claim. Where a claim exceeds £800, a detailed bill should be prepared clearly showing all items claimed.
  - d) the amount of any disbursements or expenses incurred by the Legal Practitioner on the client's behalf (vouchers or receipts may be required).
- 3) Subject to 'Recovery of Costs' below, payment will be made at the rates specified above for every full hour that the Legal Aid Administrator is satisfied has been reasonably expended. Part hours claimed should be set out and where reasonably expended will be paid as per ¼ hour or part thereof.
  - 4) Where a matter is not concluded within six months the Legal Aid Administrator will consider interim payments on account to the Legal Practitioner.
  - 5) Where legal aid has been granted subject to a contribution from the assisted person, the amount paid to the legal practitioner will be that amount that has been assessed, less the amount of the appropriate contribution.

#### **4.1.3 Remuneration for legal advice, assistance and representation provided by non-Falkland Islands Practitioners**

- 1) It should be noted that the Legal Aid Scheme is meant to cover representation by Legal Practitioners who are normally resident in and practice from the Falkland Islands.
- 2) However, it is recognised that there may be occasions when no such Legal Practitioner is available or is unable for good reasons to accept instructions in a particular case in the Falkland Islands or where expert specialist representation is needed and justified in respect of matters of Law or Advocacy.
- 3) In such cases consideration will be given by the Legal Aid Administrator to obtaining the services of Counsel or a Legal Practitioner from overseas.
- 4) The prior written approval of the Legal Aid Administrator must be obtained (unless such services are undertaken as a matter of exceptional urgency and justified when making a claim for payment) for such a course of action, whether the Counsel or Legal Practitioner from overseas is being instructed directly or as a result of a referral from a Legal Practitioner from the Falkland Islands. Such approval will normally only be given in exceptional circumstances. Where approval has not been granted, or where the Legal Aid Administrator is not satisfied that such services were undertaken as a matter of exceptional urgency,



no payment will be made in respect of any fee or disbursement resulting from the services of Counsel or a Legal Practitioner from overseas.

- 5) Where advice, assistance or representation is provided by Counsel or a Legal Practitioner from overseas (subject to such advice assistance or representation having been approved in accordance with the provisions of the Scheme) such fees, expenses and disbursements that the Legal Aid Administrator is satisfied have been reasonably expended will usually:

- (i) be assessed and paid in the same way as is set out above.
- (ii) be remunerated in the same way as would be applicable to a Legal Practitioner in the Falkland Islands.

This is the case whether such an overseas Counsel or Legal Practitioner from overseas provides his services as a result of direct instructions or on a referral basis.

Please note, by virtue of the VAT Act 1994, legal services provided in the Falkland Islands are exempt from the payment of VAT. Please ensure that any claim submitted does not include VAT.

- 6) The Legal Aid Administrator retains the discretion to vary the amount of remuneration allowed or allowable in suitably exceptional cases, provided that such variation is agreed in writing by the Legal Aid Administrator in advance.
- 7) In addition the Legal Aid Fund will pay the reasonable expenses occasioned by Counsel or the Legal Practitioner from overseas in carrying out the purpose for which he is instructed. In particular these will include but (except in exceptional circumstances) be limited to:
- i. The cost of a return flight from the UK to the Falkland Islands and accommodation on a bed and breakfast basis (please note that the provisions of para 4.1.1 (a) above will apply to both of these expenses).
  - ii. A subsistence allowance of up to £35 per day to cover necessary meals and travel whilst Counsel or the Legal Practitioner from overseas is reasonably in the Islands. Alcohol will not be paid for. All claims for subsistence must be supported by receipts at the time of claim.
  - iii. Where Counsel or the Legal Practitioner from overseas is not instructed on a referral basis by a Legal Practitioner in the Falkland Islands but is acting through direct instructions from the assisted person, the reasonable costs of a person from the Falkland Islands assisting and providing basic clerking facilities, up to a maximum of £25 per hour.
  - iv. A payment of £300 per day to cover all days that the Court does not sit on the matter for which Counsel or the Legal Practitioner from overseas have been instructed but where Counsel or the Legal Practitioner from overseas must reasonably be expected to remain in the Falkland Islands.



- v. A payment of £300 per day to cover all days for which Counsel or the Legal Practitioner from overseas is unavoidably travelling from his or her ordinary place of work to the Falkland Islands.

#### **4.1.3 Maximum Claims**

- 1) Unless the Legal Practitioner is granted prior authority, where he is acting for a petitioner in divorce, nullity or judicial separation proceedings, the maximum inclusive fee which is payable under the Scheme will be £314.82p. Where the Legal Practitioner is acting for a respondent, unless prior authority is obtained, the maximum inclusive fee is £157.41p and, except in the most exceptional circumstances, assistance under this Scheme will not be available in respect of defended divorce, nullity or judicial separation proceedings.
- 2) Unless the Legal Practitioner is granted prior authority, the maximum fee which will be paid under the Scheme for preparing a will shall be £157.41p.
- 3) Legal Aid in all other cases (Criminal Representation Order, Civil Advice and Assistance Order, Civil Representation Order) cases can, and usually will, be granted to a specified limit. Any monies then expended will not be reimbursed unless prior written approval to do so has been obtained from the Legal Aid Administrator (except in exceptional circumstances of urgency when an application should be made as soon as possible).
- 4) If Legal Practitioners wish to exceed that limit, an application for an extension should be made prior to reaching that limit. The Legal Aid Administrator will determine the maximum for that matter.
- 5) Where no other limit is shown, the maximum amount which the Legal Practitioner may claim under the Scheme is £800 in respect of any one situation or case.

#### **4.1.4 Declaration and Authority**

- 1) The administration of the Scheme depends, to some extent, upon the honesty and integrity of the individual who requests the benefit of the Scheme. In particular, it is important that the applicant declares their income and savings, housing costs, and status as to spouse or partner and children (if any) correctly and supports it with the necessary proof. Legal Practitioners must obtain from the applicant to the Scheme in all cases (save for Advice and Assistance at the Police Station) a completed, signed and dated Means Form LAM at Annex C.
- 2) The Legal Aid Administrator may ask the Commissioner of Taxation for confirmation of income using the authority given in the form of Declaration and Authority contained in the Means Form. However, in all appropriate cases, the Legal Practitioner should ensure that the following are provided:
  - a) copies of at least three months' pay slips and/or similar evidence of all income,



- b) a copy of a mortgage statement or tenancy agreement or bank statement showing housing costs,
  - c) a declaration on the form as to children for whom an allowance is claimed;
  - d) copies of bank statements to support the declaration on savings and capital (both in the Falkland Islands and overseas). Credits shown of £50 or more, the source of which is not immediately apparent from the face of the statement, should carry a written explanation as to their source.
- 3) A failure to provide this information will delay the grant of Legal Aid.
- 4) There is obligation to inform the Legal Aid Administrator if there is a material change of circumstances in respect of the applicant or assisted person which is such so as to put the applicant or assisted person in a position where Legal Aid would not be granted or if granted already would not have been granted or would have been granted only with a contribution or on other different terms.

#### **4.1.5 Recovery of Costs**

- 1) Where proceedings are commenced on behalf of an assisted person, the Legal Practitioner must seek (wherever it would be appropriate to do so in respect of a litigant who is not assisted) an order for costs. The Legal Practitioner will be expected to take steps to enforce that order.
- 2) However the Legal Practitioner need not seek such an order (unless directed otherwise by the Legal Aid Administrator):
  - a) in a consent petition for divorce;
  - b) in relation to a "Consent Order" where both parties are receiving assistance under this Scheme;
  - c) against the Crown, unless in exceptional circumstances
- 3) Proceedings for enforcement of an order for costs should only be undertaken with the prior authority of the Legal Aid Administrator and if so authorised the Legal Practitioner will be paid in respect of them at "Legal Aid rates".
- 4) The Legal Practitioner shall be bound to take proceedings to enforce any order for costs if so required. The Legal Practitioner shall be bound to pay any sum recovered under an order for costs in respect of an assisted person to the Government (the Legal Aid Fund).
- 5) Where, in the course of the proceedings for which a party has been granted Legal Aid, that party recovers or preserves money or property, that money or property shall be charged with the repayment to the Legal Aid Fund of the costs claimed, or to be claimed from the Fund by the Legal Practitioner for the recovering party. It shall be the duty of the Legal Practitioner to inform the Legal Aid Administrator immediately of the recovery or preservation, and to either repay the costs received from the Fund, or to certify that the Fund will not receive a claim on behalf of the recovering party.



- 6) The Legal Practitioner should ensure that they obtain the signed declaration and grant of consent and permission (contained in the Form LAM at Annex C) from the applicant or assisted person stating that they (the applicant or assisted person) fully understand the obligation to repay to the Legal Aid fund any costs claimed from any monies which have been retained or received and that they grant consent and permission to the Legal Practitioner repaying such costs to the Legal Aid fund in such circumstances.
- 7) In assessing the value of the money or property so charged, there shall be disregarded in any matrimonial proceedings the first £5,000. In Matrimonial cases the Legal Aid Administrator may in his or her discretion order that the obligation to repay any costs may be delayed or postponed on such terms as he thinks fit.
- 8) The Legal Practitioner shall in writing draw to the attention of every assisted litigant that should he be unsuccessful in the proceedings an Order for costs may be made against him and that any such costs will not be paid out of the Legal Aid Scheme.

## **4.2. General**

- 1) Where a client is in receipt of public funding for a case, it is essential that the Legal Practitioner writes to the client explaining the scope of the scheme, any liability for costs (pre-Legal Aid or otherwise) and the duty to report any change of circumstances. Claims may be disallowed if the Legal Practitioner has failed to give adequate information to the client.
- 2) Although not prohibited by the rules of this scheme, it would be an exceptional case where the Legal Practitioner was able to charge privately for work undertaken during the currency of a Representation Order or whilst giving Advice and Assistance.
- 3) Where a client is in receipt of public funding for a case any other party or parties to the case should be informed of the fact as soon as is possible.

## **4.3. Duties of the Legal Practitioner**

- 1) A Legal Practitioner acting for an assisted person shall be under the following duties:
  - a) A duty to report to the Legal Aid Administrator if any assisted person no longer meets the criteria for the receipt of Legal Aid funding or although meeting the criteria might only have Legal Aid funding provided on different terms; including where the circumstances of the assisted person have changed and/or where the circumstances of the case have changed so as to mean that the merits test would be unlikely then to be met.
  - b) A duty to act reasonably whilst having conduct of the matter so as not to cause any increase in the costs and disbursements payable under this Scheme;
  - c) A duty to report to the Legal Aid Administrator if an assisted person acts unreasonably whilst in receipt of funding, or fails to give proper and timely



instructions, or otherwise acts in a manner likely to increase the reasonable costs and disbursements payable under this Scheme;

- d) A duty to report to the Legal Aid Administrator all offers of settlement in civil/matrimonial cases which in the opinion of the Legal Practitioner have been unreasonably refused by the assisted person.

#### **4.4. Transitional arrangements**

The changes to the scheme will only affect any Legal Aid application made after the date that the new scheme comes into force. Any claim for a representation order that has been granted by that date will be dealt with and paid in accordance with the previous scheme. In respect of Advice and Assistance matters, the changes to the scheme will only affect such matters where the entirety of the work claimed is on or after the date that the new scheme comes into force. Any claim for Advice and Assistance where all, or part of, the work claimed is prior to that date will be dealt with and paid in accordance with the previous scheme.

#### **4.5. Appeals**

Save in the circumstances set out in para 4.1.2 above (which carries with it a specific route of appeal), any decision made by the Legal Aid Administrator may be the subject of an appeal in writing to the Senior Magistrate. Any appeal must reach the Legal Aid Administrator within 21 days of the date of the decision subject to the appeal and will be determined by the Senior Magistrate without a hearing. There is no further appeal from the decision of the Senior Magistrate.

#### **4.6. Conclusion**

- 1) A limited sum has been approved in the Departmental Budget for this Scheme and payment of legal costs. In the event it becomes apparent that the approved amount will not be sufficient to meet claims under the Scheme and any legal costs payable by the Government during the Financial Year it will be necessary for the Legal Aid Administrator to apply to Standing Finance Committee for authority to incur additional expenditure.
- 2) The provision of further funding cannot be guaranteed and should not be expected. Whether it is granted may depend upon the nature of the case or cases for which it is sought.
- 3) If that authority is withheld, it may be necessary to suspend or cancel operation of the Scheme for the remainder of the Financial Year. The Legal Aid Administrator will endeavour to put all Legal Practitioners on early notice if there is any likelihood that this will happen.
- 4) Where a Legal Aid Certificate is granted best endeavours will be used to 'ring fence' the maximum amount allowed in respect of the Certificate to ensure that the Legal Practitioner will receive payment in this respect. However this cannot be



guaranteed and Legal Practitioners are urged to submit their claims as soon as they are able to do so.



## 5. Schedule of Forms

Form	Number	Annex
Claim for work done under the Criminal Advice and Assistance Scheme	Form LA1	Annex A
Application for Legal Aid under the Criminal Representation Order Scheme	Form LA2	Annex B
Claim for work done under a Criminal Representation Order	Form LA3	Annex B
Means Form	Form LAM	Annex C
Application for Legal Aid under the Civil Advice and Assistance Scheme	Form LA4	Annex D
Claim for work done under the Civil Advice and Assistance Scheme	Form LA5	Annex D
Application for Legal Aid under the Civil Representation Order Scheme (Civil and Family)	Form LA6	Annex E
Application for Legal Aid under the Civil Representation Order Scheme (Children's Ordinance)	Form LA7	Annex E
Claim for work done under a Civil Representation Order	Form LA8	Annex E