

No. 92

THE CRIMINAL LEGAL SERVICES ORDINANCE

(Ordinance 17 of 2005)

**RULES MADE BY THE ADMINISTRATOR UNDER
SECTION 11**

In exercise of the powers vested in him by section 11 of the Criminal Legal Services Ordinance 2005, the Administrator, with the advice and assistance of the Senior Judge, hereby makes the following Rules—

**PART 1
GENERAL****Citation and commencement**

1. These Rules may be cited as the Criminal Legal Services Rules 2005 and shall come into force on the date that they are published in the Gazette.

Interpretation

2. In these Rules, unless the context otherwise requires—

“applicant” means a person seeking advice and assistance or legal aid, or on whose behalf advice and assistance or legal aid is sought;

“appropriate adult”, in relation to a child, means his parent or guardian;

“child” means a person under the age of 16.

Power to require information

3. The determining officer may require an advocate who has given advice and assistance or who provides representation under the terms of a legal aid order, to furnish such information as he may from time to time require for the purposes of his functions under these Rules; and the advocate shall not be precluded, by reason of any privilege arising out of the relationship between advocate and client, from disclosing such information to him.

Forms

4. The forms specified in Schedule 1, or forms to the like effect, shall be used where applicable with such variations as the circumstances of the particular case may require or as the determining officer may direct.

**PART II
PROVISION OF ADVICE AND ASSISTANCE AT POLICE
STATIONS****Application for advice and assistance**

5.—(1) A person wishing to receive advice and assistance shall complete Form 1.

(2) An advocate may accept an application on behalf of a child from his appropriate adult.

Advice and assistance by more than one advocate

6.—(1) Subject to paragraph (2), a person shall not be given advice and assistance in respect of the same matter by more than one advocate.

(2) A person may be given advice and assistance in respect of the same matter by more than one advocate provided that the cost of that advice and assistance shall not exceed the cost that would have been incurred had it been given by one advocate.

Separate matters

7. Where two or more separate matters are involved, each matter shall be the subject of a separate application for advice and assistance under this Part.

Limit on cost of advice and assistance

8.—(1) Subject to paragraph (2) below, the costs of an advocate for giving advice or assistance shall not exceed the amount that would be due for 2 hours work in accordance with the rate applicable to a case of the same kind in the Republic as determined in accordance with any Costs Rules in force in the Republic for the time being in respect of criminal matters.

(2) Where it appears to the advocate that the cost of giving advice or assistance is likely to exceed the limit specified in paragraph (1) above, and that the interests of justice require such additional advice or assistance to be given as a matter of urgency, he may incur such additional costs as are necessary for this purpose.

Claim for remuneration

9.—(1) A claim for remuneration in respect of costs incurred under this Part shall be submitted to the determining officer and any such claim shall be submitted within 3 months of the date on which the advice and representation was given.

(2) The advocate shall attach a copy of the Form 1 completed by the applicant to the claim made under this regulation.

(3) Where the advocate has incurred additional costs in accordance with regulation 8(2) he shall provide the reasons for so doing.

(4) The time limit within which the claim must be submitted may, for good reason, be extended by the determining officer.

Determination of remuneration

10.—(1) The determining officer shall consider any claim submitted in accordance with regulation 9, any further particulars, information or documents submitted by the advocate under regulation 3 and any other relevant information and allow —

- (a) such work as appears to him to have been actually and reasonably done by the advocate; and
- (b) such time in respect of the work allowed by him as he considers reasonable.

(2) The determining officer may allow a reasonable sum in respect of—

- (a) the waiting time of the advocate;

(b) any disbursement actually and reasonably incurred by the advocate.

(3) Subject to paragraph (4), the amounts allowed under this regulation shall not exceed the limit prescribed by regulation 8.

(4) Paragraph (3) shall not apply to costs incurred for giving advice and assistance which the determining officer is satisfied was required in the interests of justice to be given as a matter of urgency.

Review of determination

11.—(1) If an advocate is dissatisfied with the determination of the determining officer under this Part, the advocate may within 21 days of receipt of notification of the costs payable under regulation 10 apply to the Court to review that determination.

(2) On an application under paragraph (1), the Court shall review the determination of the determining officer whether by confirming, increasing or decreasing the amount of his determination.

PART III APPLICATIONS FOR LEGAL AID

Representation at Court

12.—(1) An application for a legal aid order in respect of proceedings before any Court of the Areas shall be made to the determining officer in Form 2 and the determining officer may grant or refuse the application.

(2) Except where the applicant is not required to furnish a statement of means under regulation 15, a legal aid order shall not be made on an application under paragraph (1) until the determining officer has considered the applicant's statement of means.

(3) An application may be accepted on behalf of a child if it is made by an appropriate adult of his.

(4) Where the application is granted, the determining officer shall issue a legal aid order in Form 3 to the applicant and his advocate and provide a copy of the same to the Attorney General and Legal Adviser.

Notification of refusal of legal aid

13.—(1) Where an application for a legal aid order is refused by a determining officer, that officer shall notify the applicant on Form 4 that the application has been refused on one or more of the following grounds, namely, that—

- (a) the application does not relate to the type of proceedings described in section 3 of the Ordinance; or
- (b) having regard to the matters specified in section 5(2)(b), (c) and (d) of the Ordinance, it does not appear to the determining officer desirable to make an order in the interests of justice; or
- (c) it appears to the determining officer that the applicant's disposable income and disposable capital are such that he is able to afford to pay for his own representation.

(2) A copy of the completed Form 4 shall be sent to the applicant and his advocate, if any and to the Attorney General and Legal Adviser.

Renewal of application

14.—(1) An applicant whose application under regulation 12 has been refused may renew his application to the Court before which his case is being dealt with and that Court may refuse or grant the application.

(2) Where an application is renewed under paragraph (1), the applicant shall return the notice of refusal which he received under regulation 13.

Statement of means

15.—(1) A statement of means submitted by an applicant shall be in Form 5.

(2) Subject to paragraphs (3) and (4), where an applicant does not submit a statement of means when he applies for legal aid, the determining officer shall require him to do so.

(3) Where the applicant is a child, the determining officer may require either the applicant or the appropriate adult, or both, to submit a statement of means in accordance with this regulation.

(4) A statement of means shall be required unless—

- (a) it appears to the determining officer that, by reason of his physical or mental condition, the applicant is for the time being incapable of furnishing such a statement; or
- (b) the applicant has already submitted such a statement in connection with a previous application in respect of any case before a Court of the Areas in the last 3 months and his financial circumstances have not changed.

(5) Nothing in paragraph 4(a) shall prevent the determining officer from requiring an applicant to furnish a statement of means after a legal aid order has been made where it appears that he is no longer incapable of furnishing such a statement.

Provision of information

16.—(1) At the time of submitting the statement of means the applicant or the appropriate adult shall provide evidence of the information given in that statement of means together with such additional information as the determining officer may require.

(2) Where the applicant or appropriate adult fails to provide any evidence or information requested in accordance with paragraph (1) the determining officer shall deem his disposable income and disposable capital to be such that he is able to afford to pay for his own representation.

Assessment of resources

17. The determining officer shall for the purpose of determining whether the applicant's means are such that he can or cannot afford to pay for his own representation—

- (a) consider the statement of means submitted by the applicant or appropriate adult and the evidence provided in support; and

- (b) assess his disposable income and disposable capital in accordance with Schedule 2.

Change in financial circumstances

18. The legally assisted person or the appropriate adult shall inform the determining officer of any change in his financial circumstances which has occurred since the submission of his statement of means and which he has reason to believe might affect his eligibility to legal aid in accordance with regulation 17.

Amendment of legal aid order

19.—(1) The determining officer may, on application made in Form 6, amend any legal aid by substituting for any advocate previously assigned under the order any advocate whom the determining officer could have assigned if he had then been making the legal aid order.

(2) An application made in accordance with paragraph (1) shall state the grounds on which it is made and the determining officer may grant or refuse the application.

(3) Where an application under paragraph (1) is refused, the applicant may renew his application to the Court dealing with his case which may grant or refuse the application.

(4) The determining officer may withdraw a legal aid order if the only advocate assigned under the order withdraws from the case and it appears to the determining officer that, because of the legally assisted person's conduct, it is not desirable to amend the order under paragraph (1) above.

(5) Where a legal aid order is withdrawn by the determining officer under paragraph (4), the applicant may apply to the Court dealing with his case to review that decision and the Court may confirm or amend that decision.

(6) Where a new advocate is assigned by an order amending a legal aid order, the advocate originally assigned shall send all papers and other items in his possession relating to the proceedings to the new advocate.

(7) Where the determining officer grants an application made in accordance with paragraph (1) he shall issue a further legal aid order in Form 3 to the applicant and his advocate and provide a copy of the same to the Attorney General and Legal Adviser.

Authorisation of additional expenditure

20.—(1) Where it appears to a legally assisted person's advocate necessary for the proper conduct of proceedings before a Court of the Areas for costs to be incurred under the legal aid order by taking any of the following steps—

- (a) obtaining a written report or opinion of one or more experts;
- (b) employing a person to provide a written report or opinion (otherwise than as an expert);
- (c) bespeaking transcripts of shorthand notes or of tape recordings of any proceedings, including police questioning of suspects; or

- (d) performing an act which is either unusual in its nature or involves unusually large expenditure,

he may apply to the determining officer for prior authority to do so.

(2) Where the determining officer authorises the taking of any step specified in paragraph (1), he shall authorise the maximum fee to be paid for any such report, opinion, transcript or act.

(3) Where the determining officer refuses to authorise the taking of any step specified in paragraph (1) the advocate may apply to the Court to review that decision and the Court may confirm or amend the determining officer's decision.

Claim for remuneration

21.—(1) A claim for remuneration in respect of costs incurred under this Part shall be submitted to the determining officer.

(2) A claim for remuneration may be made periodically throughout the proceedings and at the latest shall be submitted within 3 months from the end of the proceedings to which the order relates.

(3) The time limit within which the claim must be submitted may, for good reason, be extended by the determining officer.

Determination of remuneration

22.—(1) The determining officer shall consider any claim submitted in accordance with regulation 21, any further particulars, information or documents submitted by the advocate under regulation 3 and any other relevant information and allow such costs as would be payable in respect of work undertaken under a legal aid order granted by any Court of the Republic as provided for by any Costs Rules in force for the time being in the Republic in respect of criminal matters.

(2) The determining officer may, in addition to any costs payable in accordance with paragraph (1), award reasonable costs to cover the time properly and reasonably incurred by the advocate in submitting the application for legal aid.

Review of determination

23.—(1) If an advocate is dissatisfied with the determination of the determining officer under this Part, the advocate may within 21 days of receipt of notification of the costs payable under regulation 22 apply to the Court to review that determination.

(2) On an application under paragraph (1), the Court shall review the determination of the determining officer whether by confirming, increasing or decreasing the amount of his determination.

SCHEDULE 1 (regulation 4)

FORMS

FORM 1

CRIMINAL LEGAL SERVICES ORDINANCE 2005 AND THE
CRIMINAL LEGAL SERVICES RULES 2005

APPLICATION FOR ADVICE AND ASSISTANCE

No. of application

Full name of applicant*

Address

Date of Birth

Matter in respect of which advice and assistance is required (provide
full details)

.....
.....

**I hereby declare that the information furnished in this form
is true and accurate. I understand that if the information I
have provided is false or I have failed to declare any relevant
information, criminal proceedings may be filed against me.**

Signed Date

(* where the applicant is made by an appropriate adult, include both
the adult's and child's name)

FORM 2

CRIMINAL LEGAL SERVICES ORDINANCE 2005 AND THE
CRIMINAL LEGAL SERVICES RULES 2005

APPLICATION FOR LEGAL AID

No. of application

Full name of applicant

Address

Date of Birth

Proceedings for which the application is submitted (provide full details)

.....
.....
.....

Reasons why it is in the interests of justice to grant legal aid (having
regard to section 5(2)(b), (c) and (d) of the Ordinance)

.....
.....
.....

I hereby declare that the information furnished in this form is true and accurate. I also declare that if my circumstances change, I will immediately contact the determining officer of the Court concerned. I understand that if the information I have provided is false or I have failed to declare any relevant information, criminal proceedings may be filed against me and any legal aid order may be revoked.

Signed Date

Received by the Court Registrar on

at Court.

Signed (Registrar)

(* where the applicant is made by an appropriate adult, include both the adult's and child's name)

FORM 3

CRIMINAL LEGAL SERVICES ORDINANCE 2005 AND THE
CRIMINAL LEGAL SERVICES RULES 2005

LEGAL AID ORDER

No. of application

It is hereby certified that on consideration of application no.
made by(name of applicant) in
connection with the following proceedings

.....
a legal aid order is issued to cover such proceedings.

Issued on

By

FORM 4

CRIMINAL LEGAL SERVICES ORDINANCE 2005 AND THE
CRIMINAL LEGAL SERVICES RULES 2005

NOTIFICATION OF REFUSAL OF LEGAL AID

No. of application

It is hereby certified that on consideration of application no.....
made by(name of applicant) in connection with the
following proceedings a legal aid order in connection with the
proceedings is refused for the following reasons

.....
Issued on

By

FORM 5

**CRIMINAL LEGAL SERVICES ORDINANCE 2005 AND THE
CRIMINAL LEGAL SERVICES RULES 2005**

STATEMENT OF MEANS

PART I

PERSONAL DETAILS OF APPLICANT

- 1. Name of applicant*
- (*if application is made by appropriate adult include name of child as well)
- 2. Paternal Family Name:
- 3. Identity Card or Passport Number:
- 4. Date of birth:
- 5. Place of birth:
- 6. Full address (postal):
.....
.....
- 7. Telephone number:
- 8. Occupation:
- 9. Social Insurance Number (where applicable)

PART II

SPOUSE'S PERSONAL DETAILS (WHERE APPLICABLE)*

* Include details of any unmarried partner who resides with you as husband or wife

- 1. Name:
- 2. Paternal Family Name:
- 3. Identity Card or Passport Number:
- 4. Date of birth:
- 5. Place of birth:
- 6. Full address (postal):
.....
.....
- 7. Telephone number:
- 8. Occupation:
- 9. Social Insurance Number:

PART III
CHILDREN

Name all your children, married or unmarried, whether or not they reside with you.

Name and Surname	Married or single	Date of birth	Identity Card Number	Address and Telephone	Occupation	Living with the Head of Family YES/NO

PART IV
PROPERTY DETAILS

1. State below the immovable and movable property that you and your spouse or partner and dependent children possess:

(a) Immovable property. (Land, houses, machinery etc.)

Type and extent of property	Address where property situated or stored	Present value	Monthly income (if any) received from the property

(b) Movable property. (Savings, shares, bonds and interest etc.).

Type of property	Present value	Monthly income (if any) received from the property

2. State below any movable and immovable property you have transferred to other persons since 1991 (include full details of the property, the income received from the transfer and the year of transfer).

.....

.....

.....

.....

3. Debts and reasons for the debts.

Year of contracting debt	Initial amount	Reason for contracting the debt	Name of lender	Monthly instalment or payment of interest	Present amount of debt

4. House (mark with X where applicable)

- Do you live (a) in an owner-occupied house
- (b) in a rented house
- (c) in a relative's house
- (d) in another place (explain)
-
-

Describe the conditions of your house.

.....

.....

.....

PART V

PRESENT MONTHLY INCOME AND EXPENSES OF APPLICANT AND HIS DEPENDANTS

WEEKLY OR MONTHLY INCOME	
1. From applicant's employment	.....
2. From spouse's or partner's employment	.....
3. From property (movable/immovable)	.....
4. From pensions/allowances	
(a) Government pension	.....
(b) Old age pension	.....
(c) Widow/er's pension	.....
(d) Social Pension	.....
(e) Unemployment benefit	.....
(f) Sickness benefit	.....
(g) Orphans benefit	.....
(h) Rent allowance	.....
(i) Agricultural land	.....
(j) Other	.....
Total	.....

WEEKLY/MONTHLY EXPENSES	
1. Rent (including any rates and expenditure on matters such as utilities, insurance etc.)	.....
2. Special Diet (state why required)	.....
3. Travel expenses for work, medical treatment etc.	.....
4. Medical treatment	.....
5. Interest on mortgage (for freehold house)	.....
6. For child attending infant school or other institution	.....
7. Amount paid into an occupational or personal pension scheme	.....
8. Expenses in connection with the care of any dependant child residing in the same household.	.....
9. Expenses in connection with maintenance of the spouse/partner of the applicant.	.....
10. Any maintenance payments in respect of any spouse or child of the applicant who does not reside in the same household.	.....
11. Any sums payable under an order made by or arising from any conviction before a court of the Areas or the Republic in any proceedings.	.....
Total	.....

PART VI

Additional Information (Please state here any additional information you believe to be relevant to the application):

.....

PART VII

APPLICANT'S DECLARATION

(Read carefully)

I hereby declare that the information furnished in this form is true and accurate. I also declare that if my financial or family conditions change, I will immediately contact the determining officer of the Court concerned. I understand that if the information I have provided is false or I have failed to declare any relevant information, criminal proceedings may be filed against me and any civil legal aid order may be revoked. I also authorise the determining officer of the Court to obtain any information available to him in accordance with the law about my property and the property of my dependants. I realise that if I do not co-operate and if I do not provide any relevant documents requested my application may be rejected.

Date

Signature of Applicant

FORM 6

**CRIMINAL LEGAL SERVICES ORDINANCE 2005 AND THE
CRIMINAL LEGAL SERVICES RULES 2005**

APPLICATION TO AMEND LEGAL AID ORDER

No. of application

Full name of person to whom legal aid has been granted

Legal Aid Order No.

Name of advocate assigned under the Order

I hereby request that the legal aid order granted to me on
is amended by substituting for the advocate currently assigned under
the order the advocate named below –

..... (name)

..... (advocate’s place of business).

This application is made for the following reasons

.....

.....

.....

Date

Applicant’s signature

SCHEDULE 2 (regulation 17)

ASSESSMENT OF RESOURCES

General

1.—(1) In calculating the disposable income and disposable capital of the person concerned, the financial resources of any spouse of his shall be treated as his resources except where –

- (a) the person concerned and his spouse are living separate and apart; or
- (b) in all the circumstances of the case it would be inequitable to do so.

(2) Paragraph (1) shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

2. Where it appears to the determining officer that the person concerned has with intent to reduce the amount of his disposable income or disposable capital—

- (a) directly or indirectly deprived himself of any resources; or
- (b) converted any part of his resources into resources which under these Rules are to be wholly or partly disregarded, or in respect of which nothing is to be included in determining the resources of that person,

the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted as the case may be.

Disposable income

3.—(1) The income which the person concerned receives during the 3 months prior to the date on which the statement of means is submitted to the determining officer shall be taken to be his income for the purposes of the calculation to be made under this Schedule.

(2) For the purposes of this Schedule, “income” includes any wages or salary received from employment and any profits received from any trade, business or gainful occupation other than employment.

- 4.** In calculating disposable income there shall be deducted –
- (a) the total amount of any tax or other contributions payable on that income under any Ordinance in force for the time being;
 - (b) reasonable expenses of travelling to and from the place of employment;
 - (c) the amount of any contribution paid to an occupational or personal pension scheme;
 - (d) reasonable expenses in relation to the care of any dependant child of the person concerned arising because of that person’s absence from home by reason of employment;
 - (e) any sum or sums payable by the person concerned under an order made by, or arising from any conviction before a court of the Areas or of the Republic in any proceedings.

5.—(1) In calculating disposable income there shall be a deduction in respect of the main or only dwelling in the case of a householder of the amount of the net rent payable or such part of that rent as is considered reasonable in the circumstances.

(2) For the purposes of this paragraph, “rent” includes—

- (a) the annual rent payable or the annual instalment payable in respect of a mortgage debt charged on the house in which the householder resides; and
- (b) a sum in respect of yearly outgoings borne by the householder in connection with his house such as any rates and a reasonable allowance towards any necessary expenditure on repairs and insurance.

(3) Where the person concerned is not a householder there shall be a deduction in respect of the costs of his living accommodation of such an amount as is reasonable in the circumstances.

6.—(1) In calculating disposable income, there shall be a deduction—

- (a) in respect of the maintenance of the spouse of the person concerned, where the spouses are living together;
- (b) in respect of the maintenance of any dependent child and of any dependent relative of the person concerned where such persons are members of his household,

of such amount as the determining officer shall consider appropriate.

(2) Where the person concerned is making and, throughout such period as the determining officer may consider to be adequate, has regularly made bona fide payments for the maintenance of—

- (a) a spouse who is living apart;
- (b) a former spouse; (c) a child; or
- (d) a relative,

who is not a member of the household of the person concerned, there shall be a deduction at the rate of such payments or at the rate as in all the circumstances is reasonable.

7. Where the person concerned is required to, or may reasonably provide for any other matter, the determining officer may make an allowance of such amount as he considers to be reasonable in the circumstances of the case.

Disposable capital

8.—(1) In calculating the capital of the person concerned there shall be included the amount or value of every resource of a capital nature belonging to him on the date of the assessment.

(2) In so far as any resource of a capital nature does not consist of money, its amount or value shall be taken to be—

- (a) the amount which that resource would realise if sold in the open market after deduction of any expenses incurred in the sale; or
- (b) if such an amount cannot be ascertained, an amount which appears to the determining officer to be reasonable.

9. Except where it is reasonable in the circumstances so to do, no sum shall be included in the amount of the capital of the person concerned in respect of the value of the assets of any business owned in whole or in part by him.

10.—(1) Save in exceptional circumstances, no sum shall be included in the amount of the capital of the person concerned in respect of—

- (a) the value of any interest in the main or only residence in which he resides;
- (b) household furniture and effects of the main or only residence owned by him;
- (c) articles of personal clothing; and
- (d) tools and equipment of his trade.

(2) In calculating the capital of the person concerned, there may also be disregarded such an amount of capital (if any) as the determining officer decides to disregard taking into account the nature of the capital or any other circumstances of the case.

Dated this 25th day of November 2005.

By the Administrator's Command,

P. D. Draycott,

Chief Officer,

Sovereign Base Areas.

(128/406/1)

