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GAZETTE SUPPLEMENT

PART 1

NOTICES

A. The following Notices are published by order of the Commissioner:

None.

B. The following Notices are published by order of the Commissioner's Representative:

None.

PART 2
APPOINTMENTS

A. The Commissioner has made the following appointments:

None.

B. The Commissioner's Representative has made the following appointments:

None.

LEGAL SUPPLEMENT

A. The following laws have been enacted:

1. Ordinance No. 4 of 2025: The Legal Aid Ordinance 2025

B. The following Proclamations, Directions, Orders and other statutory instruments have been enacted:

1. S.I. No. 4 of 2025: The Legal Aid Regulations 2025

LEGAL SUPPLEMENT



THE BRITISH INDIAN OCEAN TERRITORY

THE LEGAL AID ORDINANCE 2025

Ordinance No. 4 of 2025

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THE BRITISH INDIAN OCEAN TERRITORY

THE LEGAL AID ORDINANCE 2025

Ordinance No. 4 of 2025

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Enacted by the Commissioner for the British Indian Ocean Territory

08 May 2025

[SIGNED ON THE ORIGINAL]

Nishi Dholakia
Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

THE LEGAL AID ORDINANCE 2025

Ordinance No. 4 of 2025

An Ordinance to make provision for legal aid to qualifying persons in respect of criminal and civil matters and for connected purposes

PART I

PRELIMINARIES

Citation and commencement

1. This Ordinance may be cited as the Legal Aid Ordinance 2025 and shall come into force forthwith.

Interpretation

2. In this Ordinance, unless the context otherwise requires –

“applicant” means a person who has applied for legal aid;

“assigned provider” means the Public Defender Service or the licensed legal practitioner assigned to provide legal services to an assisted person under section 16;

“assisted person” means a person to whom legal aid has been granted;

“civil legal aid” means legal aid granted with respect to civil proceedings;

“civil proceedings” means –

(a) proceedings, other than criminal proceedings, in the Supreme Court;

(b) proceedings in the Coroner’s Court; or

(c) an appeal from the Supreme Court or the Coroner’s Court to the Court of Appeal concerning proceedings, other than criminal proceedings;

(d) an appeal from the Court of Appeal to the Judicial Committee of the Privy Council concerning proceedings, other than criminal proceedings;

“criminal legal aid” means legal aid granted with respect to criminal proceedings;

“criminal proceedings” means proceedings instituted in accordance with section 59 of the Criminal Procedure Code 2019;

“imprisonable offence” means an offence punishable with imprisonment and includes an offence that is punishable with a fine in addition to, or as an alternative to, imprisonment;

“legal aid” means legal services provided to an assisted person under a legal aid grant, or by the Public Defender Service under section 6, in accordance with this Ordinance;

“Legal Aid Administrator” means the Legal Aid Administrator appointed under section 21;

“legal services” means legal advice, assistance and representation, and includes –

(a) actions taken that are preliminary to criminal or civil proceedings; and

(b) actions taken that are incidental to criminal or civil proceedings;

“licensed legal practitioner” means a person licensed to appear as counsel in the Supreme Court or to practise as a solicitor in the Territory under section 49 of the Courts Ordinance 1983;

“minor” means an individual under eighteen years of age;

“prescribed form” means a form prescribed by the Regulations;

“Public Defender Service” means the Public Defender Service established and funded by the Legal Aid Agency of England and Wales;

“qualifying person” means a person who qualifies for criminal legal aid under section 5 or civil legal aid under section 8;

“remuneration” includes disbursements; and

“Statement on Process” means a Statement on Process issued under the Removal Order (Process of Determination) Regulations 2022.

Ordinance binds the Crown

3. This Ordinance binds the Crown.

PART II

PROVISION OF LEGAL AID

Scope of legal aid in criminal proceedings

4. Criminal legal aid may be granted only for –

- (a) criminal proceedings that have been instituted in the Magistrate's Court or the Supreme Court with respect to an imprisonable offence;
- (b) appeals against conviction or sentence with respect to an imprisonable offence from –
 - (i) the Magistrate's Court to the Supreme Court under section 209 of the Criminal Procedure Code 2019;
 - (ii) the Supreme Court to the Court of Appeal under section 227 of the Criminal Procedure Code 2019;
 - (iii) the Supreme Court to the Court of Appeal under section 242 of the Criminal Procedure Code 2019;
 - (iv) the Court of Appeal to the Judicial Committee of the Privy Council under the British Indian Ocean Territory (Appeals to Privy Council) Order 1983;
- (c) any proceedings incidental to those specified in paragraphs (a) and (b), including bail in criminal proceedings, within the meaning of section 27 of the Criminal Procedure Code 2019;
- (d) the provision of advice and assistance in relation to preliminary inquiries or investigations into the commission of an imprisonable offence.

Qualifying for criminal legal aid

5. (1) Criminal legal aid may be granted only if –

- (a) the applicant is an individual who –
 - (i) has been charged with, or convicted of, an imprisonable offence;
 - (ii) has been arrested by a Police Officer without a warrant under section 24 of the Police and Criminal Evidence Ordinance 2019 with respect to an imprisonable offence;
 - (iii) has been arrested under a summons or warrant with respect to an imprisonable offence; or
 - (iv) in the case of the provision of advice and assistance under section 4 (d), attends voluntarily at the police station or at any other place where a Police Officer is present or accompanies a Police Officer to the police station or any such other place under section 29 of the Police and Criminal Evidence Ordinance 2019, provided that the individual has been given a caution under section 10, Schedule 5 (Code C) of the Police and Criminal Evidence Ordinance 2019 (Codes of Practice) Order 2019; and
- (b) it appears to the Legal Aid Administrator that it is in the interests of justice that the applicant be granted criminal legal aid.

(2) In considering whether the interests of justice require that the applicant be granted criminal legal aid, the Legal Aid Administrator shall have regard to –

- (a) whether the applicant has any previous convictions;
- (b) whether there is a significant risk that the applicant, if convicted, will be sentenced to a term of imprisonment;
- (c) whether there is significant risk that, whether or not the applicant is convicted, the proceedings will result in the applicant suffering serious damage to his or her reputation or the loss of his or her livelihood;
- (d) whether the proceedings involve a substantial question of law;
- (e) whether there are complex factual, legal, or evidential matters involved;
- (f) whether the applicant is able to understand the proceedings;
- (g) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses; and
- (h) whether it is in the interests of another person that the applicant be represented.

(3) The Legal Aid Administrator may have regard to any other circumstances that, in the opinion of the Legal Aid Administrator, are relevant.

Opportunity for legal advice and representation in criminal proceedings

6. (1) Immediately following a decision to detain an individual at the police station, the Police Officer in charge of the police station shall inform the individual detained that he or she has a right to obtain legal advice and representation from the Public Defender Service, at public expense –

- (a) for the purpose of any interview at the police station; and
- (b) if the individual is charged with an imprisonable offence and appears before the Magistrate's Court, before the individual pleads to the charge and before any evidence is called.

(2) The entitlement under this section is limited to the provision of legal advice and representation from a remote location by electronic means.

(3) The Legal Aid Administrator shall agree arrangements with the Public Defender Service for the provision of advice and representation in accordance with this section at no cost to the individual concerned.

(4) The provision of advice and representation under this section is chargeable to the British Indian Ocean Administration.

Scope of legal aid in civil proceedings

7. (1) Civil legal aid may be granted only for –

(a) advice and assistance to an unlawful entrant concerning whether that person should state that he wishes, or does not wish, to make a claim for international protection under the Immigration (Unlawful Entry) Ordinance 2025;

(b) an application to the Supreme Court for judicial review of an order, direction, determination or decision of –

(i) the Commissioner or an immigration officer under the Immigration (Unlawful Entry) Ordinance 2025; or

(ii) the Commissioner or the Principal Immigration Officer under section 12 of the British Indian Ocean Territory (Immigration) Order 2004;

(c) an appeal –

(i) to the Court of Appeal against a decision of the Supreme Court; or

(ii) to the Judicial Committee of the Privy Council under the British Indian Ocean Territory (Appeals to Privy Council) Order 1983;

concerning proceedings specified in paragraph (b);

(d) the provision of advice and assistance in relation to –

(i) civil proceedings specified in this section; or

(ii) proceedings incidental to civil proceedings specified in this section;

(e) any civil proceedings with respect to which the Legal Aid Administrator has made an exceptional case determination under subsection (2).

(2) If the Legal Aid Administrator is satisfied that there are exceptional circumstances in relation to an applicant or the civil proceedings for which legal aid is sought that justify the grant of legal aid, the Legal Aid Administrator may make an exceptional case determination.

(3) Without limiting subsection (2), the Legal Aid Administrator may, but is not obliged to, consider that the following proceedings justify the making of an exceptional case determination –

(a) an inquest under the Coroners Ordinance 1985, other than an Inquest on Treasure Trove;

(b) proceedings that relate to the mental health or mental capacity of the applicant;

(c) an application for the judicial review of a decision that –

(i) is likely to have a significant impact on the applicant; or

(ii) that involves a matter of wider public interest,

including an application for judicial review of a decision to refuse an application for legal aid or to set conditions or limits on the legal aid granted; and

(d) proceedings related to a writ of habeas corpus.

(4) Civil legal aid may not be granted with respect to any civil proceedings concerning or relating to—

(a) defamation;

(b) proceedings for divorce, civil status or the payment of maintenance or alimony;

(c) rights or interests arising out of the ownership or usufruct of immovable property;

(d) succession or wills; or

(e) bankruptcy or insolvency.

Qualifying for civil legal aid

8. (1) Civil legal aid may be granted only if—

(a) the applicant is an individual who is a party to, or is likely to become a party to, civil proceedings; and

(b) it appears to the Legal Aid Administrator that the applicant has demonstrated that the granting of civil legal aid is justified.

(2) In considering whether the granting of civil legal aid to the applicant is justified, the Legal Aid Administrator shall have regard to—

(a) whether the applicant has reasonable grounds for taking or defending the proceedings or being a party to the proceedings;

(b) the applicant's prospect of succeeding at a trial or other final hearing, including an appeal, in the proceedings;

(c) whether the proceedings raise a matter of significant public interest;

(d) the impact of the proceedings on the applicant;

(e) whether the likely benefits of the proceedings to the individual and others justify the likely costs, having regard to the nature of the proceedings, the prospects of success, the applicant's interest in the proceedings and all the other circumstances of the case;

(f) whether there are complex factual, legal, or evidential matters involved.

(3) The Legal Aid Administrator is not required to consider the applicant's prospect of succeeding at a trial or other final hearing where the application for civil legal aid relates to the provision of preliminary advice and assistance or a matter relating to a Statement on Process.

(4) The Legal Aid Administrator may have regard to any other circumstances that, in the opinion of the Legal Aid Administrator, are relevant.

Application for legal aid

9. (1) An application for legal aid shall be made to the Legal Aid Administrator in the prescribed form and accompanied by the documents specified by the Regulations or in the prescribed form.

(2) The applicant may, in addition, submit to the Legal Aid Administrator such other documents as the applicant considers support the application.

(3) The Legal Aid Administrator may require an applicant to provide such other information and documents as the Legal Aid Administrator requires to determine the application, including information and documentation concerning the nature of the proceedings with respect to which legal aid is sought and the circumstances in which legal aid is required.

(4) Where additional information or documents are required in accordance with subsection (3), the Legal Aid Administrator is not required to determine the application until the information or documents are provided.

(5) An application for legal aid for a minor may be made by a parent or guardian on behalf of the minor.

(6) An application for legal aid for an applicant who does not have mental capacity may be made on his or her behalf –

(a) by the applicant's guardian; or

(b) if the applicant does not have a guardian, by a person who is otherwise authorised to act for the applicant.

Grant or refusal of legal aid

10. (1) On an application for legal aid, the Legal Aid Administrator may, in respect of the whole or any part of the proceedings –

(a) grant legal aid to the applicant;

(b) grant legal aid on an interim basis until a decision is made under paragraph (a); or

(c) refuse the application.

(2) The Legal Aid Administrator may grant legal aid subject to such conditions as the Legal Aid Administrator considers appropriate.

(3) If the Legal Aid Administrator grants legal aid to an applicant, the Legal Aid Administrator shall specify the legal services that are covered by the grant.

Limit to the legal aid grant

11. (1) Subject to any regulation made under section 26(2)(b)(i), the Legal Aid Administrator may specify a limit on the legal aid authorised under the grant.

(2) The limit may be expressed in such way as the Legal Aid Administrator considers reasonable and appropriate, including one or more of the following –

- (a) a limit on the monetary sum that will be paid for the legal services, including remuneration, expenses and disbursements, to be provided under the grant, either in total or for different stages of the proceedings;
- (b) a limit on the type and extent of legal services that will be provided under the grant;
- (c) a limit on the time, in billable hours or days, that may be spent on the legal services;
- (d) a limit on the period of time for which legal aid will be provided.

Application to amend legal aid grant

12. (1) An assisted person may, at any time prior to the conclusion of the proceedings for which legal aid has been granted, apply to the Legal Aid Administrator for an amendment to the legal aid grant.

(2) On receipt of an application for the amendment of a legal aid grant, the Legal Aid Administrator may confirm the grant or amend it in a manner consistent with this Ordinance and the Regulations.

Revocation of legal aid grant

13. (1) The Legal Aid Administrator may revoke a legal aid grant in accordance with this section if –

- (a) the assisted person no longer qualifies for the legal services to be made available under the legal aid grant;
- (b) the legal services made available under the legal aid grant have been provided;
- (c) the proceedings with respect to which legal was granted have been concluded;
- (d) the assisted person consents;
- (e) the assisted person has died;

(f) the assisted person has –

(i) failed without good reason to comply with a requirement to provide information or documents to the Legal Aid Administrator or otherwise to cooperate with the Legal Aid Administrator;

(ii) in providing required information or documents to the Legal Aid Administrator has made a statement or representation knowing or believing it to be false;

(g) in the case of civil legal aid, the Legal Aid Administrator is satisfied that the assisted person has required the proceedings to be conducted unreasonably so as to incur unjustifiable expense;

(h) a condition applicable to the legal aid grant is breached or a limit on the legal aid grant is exceeded; or

(i) the Legal Aid Administrator considers that, by reason of any other change of circumstances, the continuation of legal aid can no longer be justified.

(2) The Legal Aid Administrator shall not revoke a legal aid grant under this section unless –

(a) the Legal Aid Administrator has given notice of intention to revoke the grant to the assisted person and the assigned provider acting for the assisted person;

(b) the assisted person has been given a reasonable opportunity to show cause why the legal aid grant should not be revoked; and

(c) the Legal Aid Administrator has considered any representations made by the assisted person or by the assigned provider acting for the assisted person under the grant.

(3) The revocation of a legal aid grant does not affect the right of an assigned provider acting under the grant to receive remuneration with respect to any legal services provided under the legal aid grant before the revocation or discharge took effect.

(4) Written notice of the revocation of a legal aid grant shall be given to the Court, the assisted person and the assigned provider acting for the assisted person under the grant.

(5) The written notice of revocation shall specify –

(a) the reasons for the revocation of the legal aid grant; and

(b) the right of the assisted person to seek a review of the decision to revoke under section 15.

(6) The revocation of a determination does not affect an assigned provider's right to remuneration for work done prior to the date on which a determination is revoked under this Ordinance unless the assigned provider has failed without good reason to comply with the reporting requirements in section 14.

Reporting duty

14. (1) If an assigned provider who acts for an assisted person under a legal aid grant knows or suspects that the assisted person –

(a) has failed without good reason to comply with a requirement to provide information or documents;

(b) in providing such required information or documents has made a statement or representation knowing or believing it to be false; or

(c) by reason of a change in the circumstances of the assisted person, the continuation of legal aid to the assisted person can or may no longer be justified,

the assigned provider shall immediately report the relevant circumstances to the Legal Aid Administrator.

(2) Subsection (1) has effect despite the relationship between an individual and the assigned provider or any privilege arising out of that relationship.

Review of decision

15. (1) An applicant or an assisted person may apply to the Legal Aid Administrator for a review of a decision taken by the Legal Aid Administrator that affects that person.

(2) An application under subsection (1) shall be made to the Legal Aid Administrator within 28 days of the date of the decision.

(3) If it appears to the Legal Aid Administrator that exceptional circumstances justify a late application, the Legal Aid Administrator may extend the time for making the application by a period not exceeding 8 weeks.

(4) The Legal Aid Administrator shall review the decision and may confirm the original decision or substitute a new decision.

Assignment of licensed legal practitioner or Public Defender Service

16. (1) An assisted person may choose either the Public Defender Service or a licensed legal practitioner to be assigned to the assisted person to provide legal services under the legal aid grant.

(2) Subject to subsection (3), the Legal Aid Administrator shall assign to the assisted person the Public Defender Service or licensed legal practitioner chosen by the Assisted person under subsection (1).

(3) Subsection (2) does not apply if –

(a) the Public Defender Service or licensed legal practitioner –

(i) is unavailable to act;

(ii) is unwilling to accept or refuses the assignment; or

(iii) does not agree to provide legal services under the grant for the remuneration specified in the Regulations; or

(b) the Legal Aid Administrator is not satisfied that the provider chosen by the assisted person has knowledge or experience required to provide the legal services covered by the grant of legal aid.

(4) If subsection (3) applies, the Legal Aid Administrator shall assign to the assisted person either the Public Defender Service or a licensed legal practitioner chosen by the Legal Aid Administrator who, in the opinion of the Legal Aid Administrator, is appropriate to provide the legal services to be provided under the legal aid grant.

Regulations to provide for remuneration

17. (1) The Regulations –

(a) shall provide for the remuneration payable to assigned providers providing legal services under a legal aid grant, including –

(i) the cases in respect of which remuneration is payable according to the scale rates specified in the Regulations; and

(ii) the cases, if any, when the amount of the remuneration payable may be agreed at a rate that is different to the scale rates specified in the Regulations; and

(b) may establish arrangements for the funding of remuneration payable under legal aid grants other than by the British Indian Ocean Administration.

(2) Unless the Regulations otherwise provide, remuneration payable to assigned providers for legal services provided under legal aid grants is chargeable to the British Indian Ocean Administration.

(3) The remuneration payable to assigned providers for legal services under a legal aid grant shall be determined by the Legal Aid Administrator in accordance with this Ordinance and the Regulations and shall not be subject to taxation by the Court.

Prohibition against charging fees or costs to an assisted person

18. An assigned provider acting for an assisted person under a legal aid grant shall not charge fees, costs or seek any other compensation from an assisted person or from any other person with respect to any work done for or on behalf of the assisted person after the grant of legal aid.

Costs in civil proceedings

19. (1) Costs ordered against an assisted person in relevant civil proceedings shall not exceed the amount, if any, which it is reasonable for the assisted person to pay having regard to all the circumstances, including –

(a) the financial resources of all of the parties to the proceedings; and

(b) their conduct in connection with the dispute to which the proceedings relate.

(2) In subsection (1) “relevant civil proceedings”, in relation to an assisted person, means –

(a) proceedings for the purposes of which legal services are made available to the assisted person under the legal aid grant; or

(b) if the legal services are made available to the assisted person for the purposes of only part of the proceedings, that part of the proceedings.

(3) The Regulations may make provision for exceptions from subsection (1).

PART III

ADMINISTRATION

Commissioner’s functions

20. The Commissioner shall ensure that legal aid is made available in accordance with this Ordinance.

Legal Aid Administrator

21. The Commissioner shall appoint a public officer as Legal Aid Administrator (on such terms and conditions as the Commissioner considers appropriate).

The Legal Aid Administrator’s functions and responsibilities

22. (1) The Legal Aid Administrator has the following functions –

(a) to consider and determine applications for legal aid in accordance with this Ordinance and the Regulations;

(b) to determine the legal services to be covered by a legal aid grant;

(c) to assign or approve persons authorised to act for assisted persons under a legal aid grant;

(d) to carry out any other function conferred on the Legal Aid Administrator by the Commissioner or by or under this Ordinance or any other Ordinance.

(2) The Legal Aid Administrator is responsible for the administration of this Ordinance.

Commissioner may give directions and guidance

23. (1) The Commissioner may give directions and guidance to the Legal Aid Administrator as to the performance of the Legal Aid Administrator’s functions and the Legal Aid Administrator shall –

(a) give effect to the directions; and

(b) have regard to the guidance in undertaking the functions of Legal Aid Administrator.

(2) The directions and guidance shall be general in nature and shall not be provided with respect to any individual case.

(3) The Commissioner may, at any time, amend or withdraw any directions or guidance given under this section.

(4) The Commissioner shall publish any directions or guidance given under subsection (1) in such manner as may be specified in the Regulations.

Prescribed forms

24. (1) The Regulations may prescribe forms for the purposes of this Ordinance or the Regulations.

(2) If a form is prescribed by the Regulations with respect to a document to be submitted to the Legal Aid Administrator, the document shall –

(a) be in the form of, and contain the information specified in the prescribed form; and

(b) have attached to it such documents as may be specified in the prescribed form.

PART IV

MISCELLANEOUS PROVISIONS

False information

25. An applicant or assisted person who, for the purposes of this Ordinance, knowingly makes a false statement or knowingly supplies false information commits an offence and is liable to imprisonment for two years or to a fine of £25,000.

Regulations

26. (1) The Commissioner may make Regulations for giving effect to this Ordinance.

(2) Without limiting subsection (1), the Regulations –

(a) shall provide for the remuneration payable to persons who provide legal services under this Ordinance;

(b) may –

(i) specify a limit on the monetary sum that may be paid for the legal services, including expenses and disbursements, to be provided under a

legal aid grant with respect to certain specified proceedings, either in total or for different stages of the proceedings;

(ii) establish a fund for the payment of remuneration payable under this Ordinance;

(iii) specify information and documentation to be provided by an applicant or assisted person to the Legal Aid Administrator;

(iv) provide for the circumstances in which a person may be refused legal aid by reason of the person's conduct as an applicant or an assisted person;

(v) provide for the circumstances in which, and the procedures for, applicants to seek legal aid as a matter of urgency;

(vi) provide for the amendment of a legal aid grant by the Legal Aid Administrator.

Amendments to the Police and Criminal Evidence Ordinance 2019

27. The Police and Criminal Evidence 2019, ROBIOT c.C.6 is amended in section 58 –

(a) in subsection (1), by inserting “or to obtain legal advice and representation from the Public Defender Service, at public expense in accordance with section 6 of the Legal Aid Ordinance 2025 after “privately at any time”;

(b) in subsection (4), by inserting “or the Public Defender Service” after “consult a solicitor”;

(c) in subsection (5), by inserting “or the Public Defender Service” after “consult a solicitor”;

(d) in subsection 13(b), by inserting “, except to the extent that any fees or charges are covered by a legal aid grant under the Legal Aid Ordinance 2025” after “the solicitor shall”; and

(e) by inserting the following subsection after subsection (15) –

“(15A) Subsection 15 does not apply if the fees or other charges incurred by a solicitor, or any part of those fees or other charges, are covered by a legal aid grant under the Legal Aid Ordinance 2025.”.

Transitional provisions

28. (1) A decision to grant legal aid made prior to the commencement date is not affected by the enactment of this Ordinance, but after the commencement date, this Ordinance applies to the legal aid granted as if the legal aid granted prior to the commencement date had been granted under this Ordinance.

(2) For the purposes of this section, “commencement date” means the date that this Ordinance comes into force.



BRITISH INDIAN OCEAN TERRITORY

THE LEGAL AID REGULATIONS 2025

S.I. No. 4 of 2025

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THE BRITISH INDIAN OCEAN TERRITORY

THE LEGAL AID (REMUNERATION) REGULATIONS 2025

S.I. No. 4 of 2025

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THE BRITISH INDIAN OCEAN TERRITORY

THE LEGAL AID (REMUNERATION) REGULATIONS 2025

S.I. No. 4 of 2025

In exercise of the powers conferred on him by section 26 of the Legal Aid Ordinance 2025, the Commissioner hereby makes the following regulations:

Preliminary

Citation and commencement

1. These regulations may be cited as the Legal Aid (Remuneration) Regulations 2025 and shall come into force forthwith.

Interpretation

2. In these regulations, unless the context otherwise requires –

“Civil Legal Aid Remuneration Regulations” means the Civil Legal Aid (Remuneration) Regulations 2013 made under LASPO, as those Regulations may from time to time be amended;

“Criminal Legal Aid Remuneration Regulations” means the Criminal Legal Aid (Remuneration) Regulations 2013 made under LASPO, as those Regulations may from time to time be amended;

“LASPO” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012 of the United Kingdom;

“proposed provider” means the provider proposed to be assigned to provide legal services to an applicant should legal aid be granted;

“the Ordinance” means the Legal Aid Ordinance 2025; and

“UK Remuneration Regulations” means the Civil Legal Aid Remuneration Regulations and the Criminal Legal Aid Remuneration Regulations.

Application for Legal Aid

The application

3. (1) An application for legal aid must be signed by the applicant and the proposed provider.

(2) The application must specify –

- (a) the type and extent of legal services to which the application relates;
- (b) details of the matter to which the application relates;
- (c) the type of criminal or civil proceedings instituted or proposed to be instituted;
- (d) the grounds on which the applicant claims that –
 - (i) the application is within the scope of legal aid in criminal proceedings under section 4 of the Act or, unless the applicant is applying for an exceptional case determination, under section 7(1) of the Act; and
 - (ii) the applicant qualifies for criminal legal aid under section 5 of the Act or civil legal aid under section 8(1) of the Act;
- (e) the proposed provider; and
- (f) such other information required by the prescribed form as applies to the applicant and the application.

(3) If the applicant claims that there are exceptional circumstances with respect to the applicant or the civil proceedings instituted or proposed to be instituted that justify the granting of legal aid under section 7(2) of the Act, the application must set out –

- (a) a detailed description of the circumstances; and
- (b) the grounds on which the applicant claims justify the making of an exceptional case determination by the Legal Aid Administrator.

Legal aid grant

4. (1) If the Legal Aid Administrator decides to grant an application for legal aid, the Legal Aid Administrator must issue a legal aid grant.

(2) The Legal Aid Administrator must –

- (a) send the legal aid grant to the assigned provider; and
- (b) send a copy of the legal aid grant to the applicant.

(3) A legal aid grant must state –

- (a) the name and address of –
 - (i) the assisted person;
 - (ii) if the assisted person is a minor, the parent or guardian of the minor;
 - (iii) if the assisted person does not have mental capacity, the assisted person's guardian or other person authorised to act for the assisted person; and
 - (iv) the assigned service provider;
- (b) the date of the legal aid grant and, if different, the date that the legal aid grant has effect in accordance with regulation 5(2);
- (c) the type and extent of legal services covered by the grant;
- (d) the matter with respect to which the legal services covered by the grant relate;
- (e) the criminal or civil proceedings to which the grant relates and, if applicable, the parties to the proceedings;
- (f) if section 10(1)(b) of the Act applies, that legal aid is granted on an interim basis until a decision is made;
- (g) any conditions applicable to the legal aid grant; and
- (h) whether the Legal Aid Administrator has specified a limit on the legal aid authorised under the grant and, if a limit applies, details of the limit or limits that apply.

(4) If a condition applicable to the legal aid grant is breached or a limit on the legal aid authorised is exceeded, the Legal Aid Administrator may –

- (a) revoke the legal aid grant under section 13 of the Act; or
- (b) amend the relevant condition or limit.

Date legal aid grant has effect

5. (1) Subject to this regulation, a legal aid grant has effect on the date of the determination of the application by the Legal Aid Administrator.

(2) The Legal Aid Administrator may specify that a legal aid grant has effect from a date earlier than the date of determination if the following apply –

- (a) the Legal Aid Administrator is satisfied that –
 - (i) the application was made as soon as reasonably practicable; and

(ii) it was in the interests of justice for legal services covered by the grant to be provided prior to the date of the determination; or

(b) the legal aid grant is made or amended following a review under section 15 of the Act and the Legal aid Administrator considers that it is appropriate for the legal grant to have effect from the earlier date.

Notice of refusal of legal aid grant

6. If an application for legal aid is refused, the Legal Aid Administrator must provide written notice to the applicant and the proposed provider of –

(a) the decision to refuse the legal aid grant; and

(b) the applicant's right to apply for a review of the decision under section 15 of the Act.

Notice of legal aid grant

7. (1) Where the Legal Aid Administrator issues a legal aid grant in relation to criminal proceedings that have been instituted, the assigned provider must send a copy of the legal aid grant to the applicable Court.

(2) If a legal aid grant covers the provision of advice and assistance under section 10(1)(d) of the Act, and criminal proceedings are subsequently instituted, the assigned provider must send a copy of the legal aid grant to the applicable Court.

(3) Where the Legal Aid Administrator issues a legal aid grant in relation to civil proceedings that have been instituted, the assigned provider must –

(a) send a copy of the legal aid grant to the applicable Court; and

(b) provide written notification to all other parties to the proceedings that the assisted person has been granted legal aid.

(4) If a legal aid grant is issued before the institution of civil proceedings, the assigned provider must –

(a) provide written notification to any proposed parties that the assisted person has been granted legal aid; and

(b) if proceedings are subsequently instituted, send a copy of the legal aid grant to the applicable Court.

Amendment of legal aid grant

8. (1) The Legal Aid Administrator may amend a legal aid grant to ensure that it accurately records a determination by the Legal Aid Administrator either –

(a) on the application of the assisted person; or

- (b) on the Legal Aid Administrator's own volition.

(2) On amending a legal aid grant under section 12 of the Act or subregulation (1), the Legal Aid Administrator must issue an amended legal aid grant and must –

- (a) send the amended legal aid grant to the assigned provider; and
- (b) send a copy of the amended legal aid grant to the applicant.

(3) Regulation 7 applies to an amended legal aid grant as if it was the original grant.

Remuneration

Remuneration for the provision of legal services under a legal aid grant

9. (1) Subject to the Ordinance and these Regulations, an assigned provider is entitled to be paid remuneration for legal services provided to an assisted person under and in accordance with a legal aid grant, and disbursements reasonably and properly incurred in providing those legal services as provided for in these Regulations.

(2) An assigned provider must obtain the prior approval of the Legal Aid Administrator before –

- (a) providing legal services or incurring disbursements, the remuneration for which would exceed the amount allowed under these Regulations;
- (b) instructing and obtaining advice or representation from a legal practitioner who is not a licensed practitioner or the Public Defender Service, including counsel;
- (c) instructing and obtaining advice from an expert witness or instructing an expert witness to give evidence in Court;
- (d) incurring disbursements with respect to any international travel;
- (e) obtaining the services of an interpreter; or
- (f) incurring a disbursement of a type not specified in paragraphs (a) to (e) in excess of £500.

Amount of remuneration payable

10. (1) Subject to this regulation, the remuneration payable to an assigned provider for the provision of legal services authorised under a legal aid grant shall –

- (a) in the case of legal services with respect to criminal proceedings, be based on the amounts and rates payable for comparable cases as provided in the Criminal Legal Aid Remuneration Regulations.

(b) in the case of legal services provided in civil proceedings, be based on the amounts and rates payable for comparable cases as provided for licensed work in the Civil Legal Aid Remuneration Regulations.

(3) Without limiting subsection (1), the following shall be considered in determining whether cases are “comparable cases” for the purposes of subregulation (1) –

(a) the English court that is closest in equivalence to the Court in the Territory with respect to which the legal services are being, or will be, provided;

(b) the type and complexity of the criminal or civil proceedings to which the legal aid grant applies; and

(c) the role, qualifications, expertise and experience of the person providing the legal services authorised by the legal aid grant.

(4) If, in the opinion of the Legal Aid Administrator, the Criminal Legal Aid Remuneration Regulations or, as the case may be, the Civil Legal Aid Remuneration Regulations are not appropriate with respect to the legal services authorised under the legal aid grant, the Legal Aid Administrator may, on granting legal aid, or subsequently, amend the legal aid grant to specify rates or an amount of remuneration that enhances or reduces the rates or amount of remuneration provided for in the Criminal Legal Aid Remuneration Regulations or the Civil Legal Aid Remuneration Regulations.

(5) The amendment of a legal aid grant under subregulation (4) to specify rates or an amount of remuneration that reduces the rates or amount of remuneration provided for in the Criminal Legal Aid Remuneration Regulations or the Civil Legal Aid Remuneration Regulations, as the case may be, has effect with respect to legal services provided and disbursements incurred after the amendment of the legal aid grant but not before.

(6) The amendment of a legal aid grant under subregulation (4) to specify rates or an amount of remuneration that enhances the rates or amount of remuneration provided for in the Criminal Legal Aid Remuneration Regulations or the Civil Legal Aid Remuneration Regulations, as the case may be, has effect with respect to legal services provided and disbursements incurred after the amendment of the legal aid grant unless and to the extent that the Legal Aid Administrator provides that it should have retroactive effect.

Counsel’s fees

11. (1) This regulation applies to the payment of remuneration for legal services provided by barristers in independent practice.

(2) Remuneration for legal services to which this regulation applies –

(a) in the case of legal services provided with respect to civil proceedings, must be based on the rates specified in Schedule 2 of the Civil Legal Aid Remuneration Regulations; and

(b) in the case of legal services provided with respect to criminal proceedings, must be based on the rates for barristers or counsel specified in the Criminal Legal Aid Remuneration Regulations.

(3) The principles in regulation 10 apply to the determination of counsel's fees.

Modification of the UK Remuneration Regulations

11. In applying the UK Remuneration Regulations –

- (a) “Legal Aid Administrator” is substituted for each applicable reference to “Lord Chancellor”;
- (b) “Supreme Court” is substituted for each applicable reference to “Crown Court” or “High Court”;
- (c) Judicial Committee of the Privy Council” is substituted for each applicable reference to “Supreme Court”; and
- (d) such other modifications shall be made as the circumstances require.

Monetary limit with respect to certain types of civil proceedings

12. A legal aid grant for legal services provided with respect to civil proceedings specified in section 7 of the Ordinance shall be subject to the following overall limits –

- (a) in the case of civil proceedings specified in paragraph (a) of subsection (1), £1,000; and
- (b) in the case of civil proceedings specified in subsections (b), (c) and (d), £5,000 in aggregate.

Miscellaneous

Publication of directions and guidance

13. The Commission must publish any directions or guidance given to the Legal Aid Administrator under section 23 of the Act, in the Gazette.

Forms

14. The forms set out in the Schedule are prescribed for the purposes of the Act and these Regulations.

08 May 2025

[SIGNED ON THE ORIGINAL]

Nishi Dholakia
Commissioner