

No. 91

THE CIVIL LEGAL AID ORDINANCE

(Ordinance 18 of 2005)

**RULES MADE BY THE ADMINISTRATOR UNDER
SECTION 12**

In exercise of the powers vested in him by section 12 of the Civil Legal Aid 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 Civil Legal Aid 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 civil legal aid, or on whose behalf civil 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 provides representation under the terms of a civil 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
APPLICATIONS FOR CIVIL LEGAL AID**

Application for civil legal aid

5.—(1) An application for a civil legal aid order in respect of proceedings before any Court of the Areas shall be made to the determining officer in Form 1 and the determining officer may grant or refuse the application and, if the application is granted, may exercise his power under section 6 of the Ordinance to limit the civil legal aid order to a particular stage of the proceedings concerned.

(2) Except where the applicant is not required to furnish a statement of means under regulation 8, a civil 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 civil legal aid order in Form 2 to the applicant and his advocate and provide a copy of the same to the Attorney General and Legal Adviser.

Notification of refusal of civil legal aid

6.—(1) Where an application for a civil legal aid order is refused by the determining officer he shall notify the applicant on Form 3 that the application has been refused on one or both of the following grounds, namely, that—

- (a) the determining officer is satisfied that a refusal to grant a civil legal aid order does not carry a substantial risk of leading to a breach of one of the rights specified in section 3(2) of the Ordinance; or
- (b) 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 3 shall be sent to the applicant and his advocate, if any and to the Attorney General and Legal Adviser.

Renewal of application

7.—(1) An applicant whose application under regulation 5 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 6.

Statement of means

8.—(1) A statement of means submitted by an applicant shall be in Form 4.

(2) Subject to paragraphs (3) and (4), where an applicant does not submit a statement of means when he applies for civil 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 civil legal aid order has been made where it appears that he is no longer incapable of furnishing such a statement.

Provision of information

9.—(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 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

10. 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 submitted in support;
- (b) consider the type of proceedings in respect of which a civil legal aid order is sought; and
- (c) assess his disposable income and disposable capital in accordance with Schedule 2.

Change in financial circumstances

11. 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 10.

Amendment of civil legal aid order

12.—(1) The determining officer may, on an application made in Form 5, amend any civil legal aid order 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 civil legal aid order.

(2) An application made in accordance with subsection (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 civil 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 civil 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 civil 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 civil legal aid order in Form 2 to the applicant and his advocate and provide a copy of the same to the Attorney General and Legal Adviser.

Authorisation of additional expenditure

13.—(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 civil 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

14.—(1) A claim for remuneration in respect of costs incurred under a civil legal aid order 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 civil legal aid 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

15.—(1) The determining officer shall consider any claim submitted in accordance with regulation 14, 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 civil 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 civil 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 civil legal aid.

Review of determination

16.—(1) If an advocate is dissatisfied with the determination of the determining officer under regulation 15, he may within 21 days of receipt of notification of the costs payable under that regulation apply to the Court to review that determination.

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

SCHEDULE 1 (regulation 4)

FORMS

FORM 1

**CIVIL LEGAL AID ORDINANCE 2005 AND THE CIVIL
LEGAL AID RULES 2005**

APPLICATION FOR LEGAL AID

No. of application.....

Full name of applicant*

Address

Date of Birth

Matter in relation to which the application is submitted (provide full details including as to whether the matter has been issued in a court of the Areas)

Reasons why civil legal aid is required (having regard to section 3(2) and sections 5(1)(b)-(h) 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 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.

SignedDate

Received by the determining officer on
at Court.

Signed (determining officer)

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

FORM 2

CIVIL LEGAL AID ORDINANCE 2005 AND THE CIVIL
LEGAL AID RULES 2005
CIVIL 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 matter.....a civil
legal aid order is issued to cover the entire proceedings/limited to
the following stages (*delete as appropriate*).

Issued on

By

FORM 3

CIVIL LEGAL AID ORDINANCE 2005 AND THE CIVIL
LEGAL AID 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 matter a civil legal aid order in connection with that
matter is refused for the following reasons

Issued on

By

FORM 4

CIVIL LEGAL AID ORDINANCE 2005 AND THE CIVIL
LEGAL AID 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 5

**CIVIL LEGAL AID ORDINANCE 2005 AND THE CIVIL LEGAL
AID RULES 2005
APPLICATION TO AMEND CIVIL LEGAL AID ORDER**

No. of application.....

Full name of person to whom legal aid has been granted
.....

Civil Legal Aid Order No.

Name of advocate assigned under the Order
.....

I hereby request that the civil 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 10)

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.

(128/415/1)