

Rules made under ss.10 and 18.

Subsidiary
1960.12.29

LEGAL AID AND ASSISTANCE RULES

(1960.12.29)

1.1.1961

Amending enactments	Relevant current provisions	Commencement date
rules of 30.12.1968	rr.16(1), 17(4) and 19(2)	
17.4.1969	r.6(2)	
LN. 1972/020	r.6(2)	
1974/082	r.6(2)	
2018/146 ¹	rr. 6A, 7, 16(1)(a), (c), (e), 17(4), 19(2)(f), 23, 24(5),	27.6.2018

¹ If these Rules are revoked before the expiry of three years from the date of commencement, then the previous provisions which were revoked by these Rules shall be revived thereby reverting to the state of law before these Rules were commenced.

ARRANGEMENT OF RULES

Rule

1. Title.

Criminal Proceedings.

2. Lists of counsel willing to be assigned.
3. Lists of applications for legal aid certificates.
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Civil Proceedings.

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SCHEDULE 1.

Legal aid: Forms

SCHEDULE 2

Legal assistance: Forms.

Title.

1. These Rules may be cited as the Legal Aid and Assistance Rules.

Criminal Proceedings.

Lists of counsel willing to be assigned.

2.(1) Lists shall be kept containing the names of legal practitioners who are willing to be assigned in pursuance of certificates of legal aid granted under Part I of the Act in accordance with the following provisions—

- (a) the Registrar of the Supreme Court (hereinafter referred to as the Registrar) shall keep a list of legal practitioners who are willing to appear as counsel in trials in the Supreme Court for the purposes of section 3 of the Act, and who are willing to appear as counsel in appeals to the Supreme Court for the purposes of section 5 of the Act;
- (b) the clerk to the justices shall keep a list of legal practitioners who are willing to appear as counsel in proceedings before examining justices and the magistrates' court for the purposes of section 4 of the Act.

(2) The Registrar shall furnish the clerk to the justices with copies of the lists kept by him under this rule and shall notify him of any alterations which may from time to time be made therein.

(3) The name of any legal practitioner shall be removed from all or any of such lists either on the application of the member or for good and sufficient cause by direction of the Chief Justice.

Lists of applications for legal aid certificates.

3. Lists of all applications for a certificate for legal aid under Part I of the Act shall be kept—

- (a) by the Registrar in the case of applications to the Chief Justice under section 3 or 5 of the Act;
- (b) by the clerk to the justices in the case of applications to a committing justice under section 3 of the Act or to an examining justice or the magistrates' court under section 4 or 5 of the Act,

and there shall be entered in such lists the following particulars—

- (i) the name of the applicant;
- (ii) the name and subject of the proceedings in respect of which legal aid is applied for; and
- (iii) the date and result of the application.

Assignment of counsel.

4.(1) The Chief Justice, court or justice granting a certificate for legal aid shall, as soon as may be, after granting a certificate and after taking into consideration any representations made by the person in respect of whom it is granted, assign to him from one of the lists referred to in rule 2 as may be relevant counsel to whose services that person shall be entitled.

(2) In the absence of any representation made by the accused person to which it appears that effect ought to be given, and of any special circumstances, the assignment of counsel shall be in strict rotation according to the lists kept under rule 2. Any counsel assigned out of his turn will be passed over when his turn comes in the ordinary course.

Form and disposal of certificates.

5.(1) A certificate for legal aid under Part I of the Act shall be in such one of the forms set out in Schedule 1 as shall be applicable to the proceedings in respect of which it is granted.

(2) Whenever a certificate for legal aid is granted by a committing justice under section 3 of the Act or by the magistrates' court under section 5 of the Act, the clerk to the justices shall, as soon as may be, send the certificate to the Registrar, together with the name of the counsel assigned.

*Civil Proceedings.***Entitlement of legal assistance.**

6.(1) Part II of the Act shall have effect subject to the modifications contained in this rule.

(2) Legal assistance under Part II of the Act shall be available only to persons otherwise qualified therefor under the said Part II and who—

- (a) are ordinarily resident in Gibraltar; or
- (b) not being ordinarily resident in Gibraltar, are—

- (i) Gibraltarians as defined in the Gibraltarian Status Act;
- (ii) nationals of a reciprocating State;
- (iii) employed in Gibraltar under a permit for employment granted under Part III of the Employment Act;
- (iv) employed in Gibraltar but who do not require a permit under the Employment Act by reason of holding or of being entitled to be issued with a permit under Part IX of the Immigration Control Act.

(3) In this rule “reciprocating State” means a State notified by the Governor by notice in the Gazette to be a reciprocating State for the purposes of the Act, being a State between which and the United Kingdom there subsists for the time being an agreement providing that in similar circumstances the nationals of each State shall enjoy in the territory of the other State equal treatment as regards free legal assistance.

Mediation.

6A.(1) Legal assistance granted under Part II of the Act to a person in non-judicial review proceedings shall be subject to a condition that he engage in an approved mediation procedure before commencing proceedings.

(2) The condition mentioned in sub-rule (1) shall not apply where the Registrar determines that, in the exceptional circumstances of the proceedings in question, mediation would not serve the interests of justice.

(3) The condition mentioned in sub-rule (1) shall not apply where the Registrar determines that, in light of the urgency of the proceedings in question, mediation is impractical and in such cases, mediation will be undertaken as soon as possible thereafter.

(4) An approved mediation procedure in sub-rule (1) means a structured process, however named or referred to, whereby the parties to the dispute attempt by themselves to reach an agreement on the settlement of their dispute with the assistance of a mediator and this process is or ordered by the Registrar or prescribed by any provisions of law.

(5) A mediator in an approved mediation must be—

- (a) a member of a professional body that sets standards for its members as regards training, codes of conduct, insurance or such other matters as the Registrar considers appropriate; or
- (b) a person who, in the opinion of the Registrar, has the experience, knowledge or qualifications to be a mediator for the purpose of these Rules.

(6) Where legal assistance is granted in relation to proceedings within sub-rule (1), the Registrar shall make available such sum, between £600 and £1350, as he considers reasonable to meet mediation fees.

(7) In deciding the fee to be made available under sub-rule 6, the Registrar shall take into consideration the nature of the proposed proceedings, its complexity and, if it is a monetary claim, the amount of damages in question.

Discontinuance of proceedings.

7.(1) Neither a person receiving legal assistance under Part II of the Act, nor the solicitor or barrister assigned, shall be at liberty to enter into any settlement or compromise, or to discontinue the proceedings in question, without leave of the court in which the proceedings are taken, or without leave of the Registrar of the Supreme Court.

(2) The Registrar of the Supreme Court in deciding whether to grant leave under sub-rule (1), shall ensure that the costs of the person receiving legal assistance are accounted for in the settlement or compromise or following the discontinuance and, unless the Registrar shall otherwise order, paid into the Consolidated Fund.

Duty of conducting solicitor.

8. The conducting solicitor shall sign every petition, notice of motion, summons or pleadings to be served, issued or delivered on behalf of the person receiving legal assistance.

Revocation of certificate.

9. (1) The Chief Justice, or the Judge of the Court of First Instance when proceedings are taken in the Court of First Instance, may at any stage revoke the certificate, provided that no such revocation shall be retrospective unless it is otherwise expressly ordered.

(2) Where it appears to the Chief Justice, or to the Judge of the Court of First Instance, as the case may be, that such certificate was obtained by fraud

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or misrepresentation he may, in addition to revoking the certificate, direct that the costs of any other party shall be paid by the assisted person, in which case costs shall be taxed as though such certificate had never been issued.

Increase of means after certificate.

10.(1) If and whenever a person receiving legal assistance becomes possessed of means exceeding those taken into account on the issue of a certificate under section 14 of the Act, the assisted person shall forthwith and from time to time inform the conducting solicitor.

(2) If any such matter comes to the notice of the conducting solicitor, whether by means of such information or otherwise, he shall forthwith report in writing to the Registrar.

Effect of certificates.

11. Legal assistance shall be available to any person to whom a certificate in the form provided in Form G in Schedule 2 has been issued.

Any document purporting to be a certificate issued in accordance with these rules shall, unless the contrary is proved, be deemed to be a valid certificate issued to the person named therein,

Applications for certificates.

12.(1) Every application for a certificate for legal assistance (including an emergency certificate issued under the provisions of rule 17) shall be in the form approved by the Registrar and contain such information and shall be accompanied by such documents as may be requisite to enable the Registrar to determine—

- (a) the nature of the proceedings in which legal assistance is sought and the circumstances in which the legal assistance is required; and
- (b) to determine the income and capital of the applicant, for which purpose the applicant shall undertake to furnish the Registrar with such further information as he may require in the circumstances of the case.

The application shall also be accompanied by an undertaking, signed by the applicant, that he will pay on demand a sum to defray the expenses of any preliminary enquiries which the Registrar may make as the result of the application.

(2) In the case of a person resident outside Gibraltar and not being able to be present in Gibraltar whilst his application is being considered, every application shall be sworn before a justice of the peace or magistrate or British consular officer or any person for the time being authorized by law in the place where he is to administer an oath for any judicial or other legal purpose, and shall be accompanied by—

- (a) a statement in writing, signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant's income and capital; and
- (b) an undertaking, signed by the applicant, that he will pay on demand a sum to defray the expenses of any preliminary enquiries which the Registrar may make as a result of the application.

(3) For the purposes of determining the income and capital of the applicant the Registrar shall have power to summon any person including the applicant to appear before him to give evidence on oath or to produce any document and for these purposes he shall have all the powers of the magistrates' court.

Any summons by the Registrar under the foregoing provision of this rule shall be signed by the Registrar and may be served either personally or by post.

Applications on behalf of persons under disability.

13.(1) An application for legal assistance for a minor or person suffering from mental disorder shall be made by a person of full age and capacity on his behalf, and where the application relates to proceedings which are required by law to be brought and defended by next friend or guardian ad litem, that person shall be the next friend or guardian ad litem, or, where proceedings are not actually begun, a person intending to act in that capacity.

(2) The Registrar shall not issue a certificate applied for by a person on behalf of a minor or person suffering from mental disorder unless that person has signed an undertaking to pay to the Consolidated Fund (if called upon to do so) any sum which by virtue of the Act or rules, the Registrar may require an assisted person of full age and capacity to pay upon the issue or during the currency or upon discharge or revocation of the certificate.

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(3) Any certificate issued by virtue of this rule shall be in the name of the minor or person suffering from mental disorder, stating the name of the person by whom he has applied.

(4) In any matter relating to the issue, amendment, revocation or discharge of a certificate issued by virtue of this rule, and in any other matter which may arise between the Registrar and an assisted person, the person by whom the minor or person suffering from mental disorder has applied for a certificate shall be treated for all purposes as the agent of the minor or person suffering from mental disorder.

Joint interest.

14.(1) Where an application is made by or on behalf of a person in connection with a cause or matter in which numerous persons have the same interest, and, in accordance with law, one or more persons may sue or be sued, or may be authorized by a court to defend any such cause or matter on behalf of or for the benefit of all persons so interested, the Registrar shall refuse the application if he is satisfied—

- (a) that such refusal would not seriously prejudice the rights of the applicant; or
- (b) that it would be reasonable and proper for the other persons having the same interest in the matter as the applicant to defray so much of the costs as would be payable from the Consolidated Fund in respect of the proceedings if the certificate were issued.

(2) Where an application is made by or on behalf of a person who has the right, in accordance with law, to be joined in one action as plaintiff with others in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, because, if those persons brought separate actions a common question of law or fact would arise, the Registrar may issue a certificate limited to such proceedings as may be necessary to preserve the applicant's right to relief.

Expectation of financial help.

15. Where it appears to the Registrar that the applicant has available rights and facilities making it unnecessary for him to obtain legal assistance or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the Registrar shall not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights,

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facilities or help, after having, in the opinion of the Registrar, taken all reasonable steps to enforce or obtain them :

Provided that where it appears that the applicant has a right to be indemnified against expenses incurred in connection with any proceedings, it shall not, for the purposes of this rule, be deemed a failure to take a reasonable step if he has not taken proceedings to enforce that right, whether for a declaration of that right or otherwise.

Refusal of certificates.

16.(1) If the Registrar refuses an application for a certificate he shall notify the applicant, stating that the application has been refused on one or more of the following grounds—

- (a) that he has determined that the applicant's income is more than the relevant amount as set out in rule 2(1) of the Legal Assistance (Amendment) Rules 2018 and legal assistance is therefore not available to him under the provisions of Part II of the Act; or
- (b) that the proceedings to which the application relates are not proceedings for which legal assistance can be given; or
- (c) that he has determined that the applicant having an income of less than the relevant amount as set out in rule 2(1) of the Legal Assistance (Amendment) Rules 2018, has a capital of more than the relevant amount set out in rule 2(2) of said Rules and it appears to the Registrar that he can afford to proceed without legal assistance; or
- (d) that the applicant has not shown that he has reasonable grounds for taking, defending or being a party to the proceedings; or
- (e) that it appears unreasonable that he should receive legal assistance in the particular circumstances of the case.

(2) Without prejudice to the generality of section 12(4) of the Act an application for a certificate shall not be approved where it appears to the Registrar that only a trivial advantage would be gained by the applicant from the proceedings to which the application relates or that, on account of the simple nature of the proceedings, a solicitor would not normally be employed.

(3) Any applicant considering himself aggrieved by the decision of the Registrar as to his entitlement to receive legal assistance or as to the amount

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of contribution or as to the discharge or revocation by the Registrar of his legal assistance certificate may within fourteen days of receipt of the decision appeal in writing to the Chief Justice.

Emergency certificates.

17. (1) Any person who desires legal assistance as a matter of urgency may apply for an emergency certificate to the Registrar in the form approved by the Registrar.

(2) An application for an emergency certificate shall give such information as may be requisite to enable the Registrar to determine whether—

- (a) the applicant is likely to fulfil the conditions under which legal assistance may be granted under the Act and rules made thereunder; and
- (b) it is the interests of justice that the applicant should as a matter of urgency, be granted legal assistance,

and should furnish such additional information and documents (if any, as may be sufficient to constitute an application for a certificate under the provisions of rules 12:

Provided that if it appears to that Registrar that the applicant cannot, at the time of the application, reasonably furnish that information, or any part of it, the Registrar shall nevertheless have power to issue an emergency certificate subject to such conditions as to the furnishing of additional information as he thinks reasonable.

(3) An emergency certificate shall be in the form provided in Form H in Schedule 2 and the certificate and one copy of it shall be sent to the solicitor selected by the applicant from the appropriate panel and one copy shall be sent to the applicant.

(4) An emergency certificate shall have the same effect in all respects as a certificate and any person holding an emergency certificate shall, while it is in force, be deemed for the purposes of Part II of the Act and these Rules to have an income not exceeding the relevant amount as set out in rule 2(1) of the Legal Assistance (Amendment) Rules 2018.

(5) An emergency certificate shall remain in force for a period of six weeks, or such longer period not exceeding three months as the Registrar may allow, and unless within that period a certificate is issued in respect of

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the proceedings to which the emergency certificate relates, it shall, at the end of that period, be deemed to have been revoked:

Provided that if within that period the Registrar refuses the application for a certificate in respect of the proceedings to which the emergency certificate relates he shall forthwith revoke the emergency certificate.

(6) Upon an emergency certificate being extended or being revoked under the provisions of subrule (5) the Registrar shall forthwith issue a notice in the form provided in Form J in Schedule 2, and shall send the notice and one copy thereof to the solicitor acting for the person to whom the emergency certificate was issued and shall send a further copy to that person and it shall be the duty of the solicitor to notify forthwith any barrister whom he may have instructed that the certificate has been revoked.

(7) A certificate issued within the period referred to in subrule (5) in respect of proceedings to which an emergency certificate relates shall take effect from the date upon which the emergency certificate was issued and shall state—

- (a) the date of issue of the emergency certificate ;
- (b) the date and the period of any extension of the emergency certificate under the provisions of that paragraph; and
- (c) the date of issue of the certificate.

Amendments of certificates.

18.(1) The Registrar may amend a certificate—

- (a) where it appears that there has been an error or mistake in a certificate ; or
- (b) where, in the opinion of the Registrar, it has become desirable either for the certificate to extend to other proceedings, being part of the same action, cause or matter to which the certificate relates, or for the certificate not to extend to certain of the proceedings in respect of which it was issued; or
- (c) when an assisted person desires to change the solicitor who is acting for him or a solicitor gives up an assisted person's case.

(2) The provisions of rules 12 and 16 shall apply, so far as applicable, to applications for the amendment of certificates as they apply to applications for certificates.

(3) Where the Registrar amends a certificate he shall issue a notice of amendment in the form provided in Form J in Schedule 2, and shall send the notice and one copy thereof to the assisted person's solicitor, and a further copy to the assisted person.

Discharge and revocation of certificates.

19.(1) A certificate may be either discharged or revoked by the Registrar in the circumstances specified in this rule.

- (2) The Registrar may discharge or revoke a certificate –
- (a) at any time at the request of the person to whom it is issued;
 - (b) where an assisted person has been required to make a contribution and any payment thereof is more than twenty– one days in arrears ;
 - (c) if satisfied, after considering any report of the assisted person’s solicitor, that the proceedings to which the certificate relates have been disposed of;
 - (d) where the assisted person’s solicitor or barrister has given up a case and the Registrar is satisfied that the assisted person has required the proceedings to be conducted unreasonably so as to incur an unjustified expense to the Consolidated Fund or has required unreasonably that the proceedings be continued;
 - (e) where the assisted person has died or has had a receiving order made against him;
 - (f) where, as a result of further determination, it appears to the Registrar that the assisted person can afford to proceed without legal assistance, because his annual income exceeds the relevant amount as set out in rule 2(1) of the Legal Assistance (Amendment) Rules 2018, or his capital exceeds the relevant amount set out in rule 2(2) of the Legal Assistance (Amendment) Rules 2018;
 - (g) where as a result of information coming to his knowledge he considers that an assisted person no longer has reasonable grounds for taking, defending or being a party to the proceedings or, as the case may be, that it is unreasonable for him in the particular circumstances to receive legal assistance:

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Provided that a certificate shall not be discharged under paragraphs (d) and (g) until the assisted person has been given an opportunity to show cause why the certificate should not be discharged.

(3) Where the Registrar is satisfied that an assisted person has wilfully failed to comply with any rule as to the information to be furnished by him, or, in furnishing any such information has knowingly made a false statement or false representation, he may, if he thinks fit—

- (a) where such omission or act occurred prior to the issue of a certificate, revoke the certificate ; or
- (b) where such omission or act occurred after the issue of the certificate, wharge the certificate from the date uponwhich such omission or act occurred.

(4) At any time during the hearing of any proceedings to which an assisted person is a party the court may, upon application by or on behalf of any other party to the proceedings or by the Registrar, consider whether the assisted person—

- (a) has wilfully failed to comply with any rule as to the information to be furnished by him; or
- (b) in furnishing any such information has knowingly made a false statement or false representation;

and on any such application the court may make an order revoking the certificate or discharging it from such date as may be appropriate:

Provided that no order shall be made under this subrule until the assisted person has been given an opportunity to show cause why the certificate should not be discharged, or as the case may be, revoked.

(5) Where the Registrar or the court discharges or revokes an assisted person's certificate the Registrar shall forthwith issue a notice of discharge or revocation in the form provided in Form J in Schedule 2, and shall send the notice and one copy thereof to the solicitor, who shall forthwith inform any barrister instructed by him, and shall also send a copy of the notice to the assisted person.

Effect of discharge and revocation of certificates.

20. (1) Subject to the provisions of these Rules, a person whose certificate is revoked shall be deemed never to have been an assisted person in the proceedings to which the certificate related, and a person whose certificate is

discharged shall, from the date of discharge, cease to be an assisted person in those proceedings.

(2) Upon receipt by him of notice of revocation or discharge of a certificate by the Registrar or upon revocation or discharge of a certificate by the court, the retainer of any solicitor and of any barrister selected by or acting on behalf of the assisted person in proceedings to which the certificate relates shall forthwith determine.

(3) Upon determination of a retainer under this rule—

- (a) the costs of the proceedings to which the certificate related, incurred by or on behalf of the person to whom it is issued, shall, as soon as practicable thereafter, be taxed or, as the case may be, assessed in accordance with the provisions of the Act and these Rules;
- (b) the Consolidated Fund shall remain liable for the payment of any costs so taxed or assessed.

Conduct of proceedings on behalf of assisted persons.

21.(1) Where it appears to the assisted person's solicitor that it is necessary for the proper conduct of the proceedings to take or apply to the court for leave to take any one or more of the following steps, namely—

- (a) to add any further party to the proceedings; or
- (b) to bespeak any transcript or shorthand note of any proceedings;
or
- (c) to lodge any interlocutory appeal; or
- (d) to instruct more than one barrister; or
- (e) to set up or set off any right or claim having the same effect as a cross action (other than a counter claim or set off arising out of the same transaction and capable of being pleaded as a defence), or to reply to any right or claim so setup or set off by any other party;

he shall (unless the certificate provides for the act in question to be done) apply to the Registrar for authority so to do, and no payment shall be allowed on taxation for any step taken without his approval.

(2) The Registrar may give general authority to solicitors acting for assisted persons in any particular class of case to obtain experts' reports or

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opinions and to tender expert evidence, and if so he shall state the maximum fee to be paid for any report or opinion or expert witness.

(3) Where it appears to an assisted person's solicitor that it is necessary for the proper conduct of the proceedings either—

- (a) to obtain a report or opinion of one or more experts or to tender expert evidence in a case of a class not included in any general authority under the foregoing paragraph; or
- (b) to pay, in a case so included, a higher fee than that provided in any rules made under the Act or to obtain more reports or opinions or to tender more experts as witnesses than have been authorized,

he may apply to the Registrar for authority so to do, and if the Registrar gives authority he shall state the minimum number of reports or opinions that may be tendered, or the maximum number of persons who may be tendered to give expert evidence and the maximum total fee to be paid therefor.

(4) Save as provided by the rule, no payment shall be made for the report or opinion of an expert or for expert evidence tendered by or on behalf of an assisted person.

Service of notices, etc.

22.(1) Any notice required to be served under any provision of these Rules shall be served either personally or by prepaid post to the last known address of the person required to be served.

(2) Whenever an assisted person becomes a party to proceedings, or a party to proceedings becomes an assisted person, his solicitor shall forthwith serve all other parties with notice in the form provided in Form I in Schedule 2, and shall, if at any time thereafter any other person becomes a party to the proceedings, forthwith serve similar notice upon such person.

Legal assistance granted after commencement of proceedings.

23. (1) Where, after proceedings have been instituted in any court any person becomes an assisted person in regard to those proceedings, the provisions of the Act as to costs shall apply only to so much of the costs of the proceedings as are incurred whilst a certificate is in force.

(2) Any solicitor who has acted in the proceedings on behalf of the assisted person before the date of the certificate, and any solicitor who has a

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lien on any documents necessary for the proceedings to which the documents relate and who has delivered them up subject to his lien, may give notice of the fact to the Registrar.

(3) If damages or costs are recovered for the assisted person in the proceedings, there shall be paid to the solicitor out of the Consolidated Fund the costs to which he would have been entitled on a taxation between solicitor and client:

Provided that in any case where the sums so recovered are insufficient to meet those costs in full and also to meet the net liability of the Consolidated Fund on the assisted person's account, the sum recovered in the proceedings shall be divided between the Consolidated Fund and the solicitor in proportion to the amount owing to each.

Property recovered or preserved for and costs awarded to an assisted person.

24.(1) All moneys payable to an assisted person—

- (a) by virtue of any agreement or order made in connection with the action, cause or matter to which his certificate relates, whether such agreement be made before or after proceedings are actually begun; or
- (b) being moneys paid into court by him or on his behalf and ordered to be repaid to him; or
- (c) being money standing to the credit of any proceedings to which his certificate relates,

shall be paid, or repaid, as the case may be, to the solicitor of the assisted person and no other person shall be capable of giving a good discharge for moneys so payable.

(2) Upon receipt of moneys paid to him by virtue of this rule the assisted person's solicitor shall—

- (a) inform the Registrar of any property recovered or preserved for the assisted person in any action, cause or matter where his remuneration falls to be determined by him ;
- (b)
 - (i) pay to the Consolidated Fund any sum paid to him in proceedings in which the costs of the assisted person are,

by virtue of rule 20, required to be taxed as between solicitor and client; and

- (ii) any sum paid to him by virtue of an agreement for costs made in the assisted person's favour in connection with any action, cause or matter where by virtue of rule 21 his remuneration falls to be determined by the Registrar; and

- (c) pay any other moneys to the assisted person.

(3) Upon receipt of moneys paid to the Consolidated Fund by virtue of this rule there shall be retained for the Consolidated Fund any sum paid by virtue of an order or agreement for costs made in the assisted person's favour, and the balance shall be paid to the assisted person.

(4) The payment to an assisted person's solicitor of his profit costs in connection with the proceedings may be deferred until he has given effect to any provision of this rule.

(5) Where moneys are payable to an assisted person and provision is not made under sub-rule (1)(a) to (c) for his costs or the totality of his costs, the Registrar shall order such amount as he considers appropriate from the monies received to be paid by the solicitor into the Consolidated Fund to cover such costs.

Charges upon property recovered or preserved.

25. (1) Any sums remaining unpaid on account of a person's contribution in respect of costs in any proceedings shall be a first charge for the benefit of the Consolidated Fund on any property which is recovered or preserved for him in the proceedings.

(2) Any charge on property recovered or preserved for an assisted person arising under the foregoing paragraph shall vest in the Consolidated Fund.

(3) The Registrar may enforce any such charge in any manner which would be available if the charge had been given inter partes.

(4) Subject to the provisions of any law, all conveyances and acts done to defeat, or operating to defeat such charge, shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the Consolidated Fund.

Costs awarded against an assisted person.

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26. (1) Where an order for costs is made against an assisted person, the determination of the amount of his liability for costs shall be made at the trial or hearing of the action, cause or matter:

Provided that the court may, if it thinks it expedient in the interests of justice and upon such terms, if any, as it thinks fit—

- (a) postpone or adjourn the determination for such time and to such place, including chambers, as the court thinks fit, so however that the determination shall take place before the judge before whom the trial or hearing took place ; or
- (b) refer to the Registrar for investigation in chambers any question of fact relevant for the determination, requiring him to report his finding on that question to the court.

(2) The court may direct—

- (a) that payment under the order for costs shall be limited to such amount, payable by instalments or otherwise, as the court thinks reasonable having regard to all the circumstances; or
- (b) that payment under the order for costs be suspended either until such date as the court may determine or sine die, where the court thinks it reasonable either for payment under paragraph (a) not to be made immediately, or for the assisted person to have no liability for payment.

(3) The party in whose favour the order for costs is made may, within six years from the date thereof, apply to the court for the order to be varied on the grounds that there has been a change in the assisted person's circumstances since the date of the order and on such application the order may be varied as the court thinks fit; save as aforesaid the determination of the court shall be final.

(4) Where an assisted person serves notice of discontinuance or where an order for costs is made against him by reason of his default of defence or by reason of summary judgment, or upon application by him for leave to discontinue, he shall be liable for the full amount of the costs.

Forms.

27. The forms in the Schedules shall be used whenever applicable with such variations as circumstances may require.

SCHEDULE 1.

LEGAL AID: FORMS.

FORM A.

Rule 5 (1).

LEGAL AID CERTIFICATE BY COMMITTING JUSTICE
UNDER SECTION 3 OF THE LEGAL AID AND ASSISTANCE
ACT.

I, _____, the Committing Justice in the case of
_____, having committed him for trial on a charge
(charges) of _____, and being satisfied that he has
insufficient means to enable him to obtain legal aid in the preparation and
conduct of his defence at the trial, do hereby grant in respect of him this
certificate for legal aid.

Dated this _____, day of _____, 20.....

Justice of the Peace.

FORM B.

Rule 5 (1).

LEGAL AID CERTIFICATE BY THE CHIEF JUSTICE UNDER
SECTION 3 OF THE LEGAL AID AND ASSISTANCE ACT.

Being satisfied that _____ who has been committed for
trial on a charge (charges) of _____ has insufficient
means to enable him to obtain legal aid in the preparation and conduct of his
defence at the trial, I do hereby grant in respect of him this certificate for
legal aid.

Dated this _____ day of _____, 20.....

Chief Justice.

FORM C.

Rule 5 (1).

LEGAL AID CERTIFICATE BY EXAMINING JUSTICE UNDER

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SECTION 4 OF THE LEGAL AID AND ASSISTANCE ACT.

I, _____, the Examining Justice in the case of _____, charged with _____, being satisfied that he has insufficient means to enable him to obtain legal aid in the preparation and conduct of his defence before me, do hereby grant in respect of him this certificate for legal aid.

Dated this day of, 20.....

Justice of the Peace.

FORM D.

Rule 5 (1).

LEGAL AID CERTIFICATE BY MAGISTRATES' COURT UNDER SECTION 4 OF THE LEGAL AID AND ASSISTANCE ACT.

I (We), _____, Stipendiary Magistrate (Justice of the Peace), being the magistrates' court before which _____ is charged with _____, being satisfied that he has insufficient means to enable him to obtain legal aid in the preparation and conduct of his defence before this court, do hereby grant in respect of him this certificate for legal aid.

Dated this day of, 20.....

Stipendiary Magistrate
or
Justice of the Peace.

FORM E.

Rule 5 (1).

LEGAL AID CERTIFICATE BY MAGISTRATES' COURT UNDER SECTION 4 OF THE LEGAL AID AND ASSISTANCE ACT.

I (We), _____, Stipendiary Magistrate (Justice of the Peace), being the magistrates' court before which _____ has been convicted of _____, against which conviction(s) he desires to appeal being satisfied that he has insufficient means to enable him to obtain legal aid in the preparation and conduct of his appeal* and that by reason of exceptional circumstances it is desirable in the

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interests of justice that he should have such aid*, do hereby grant in respect of him this certificate for legal aid.

Dated this, day of, 20.....

Stipendiary magistrate
or
Justice of the Peace.

* Note. *–Delete the words between asterisks if the conviction is for an offence punishable with imprisonment (other than imprisonment in default only of payment of a fine).*

FORM F.

Rule 5 (1).

LEGAL AID CERTIFICATE BY THE CHIEF JUSTICE UNDER SECTION 5 OF THE LEGAL AID AND ASSISTANCE ACT.

Being satisfied that _____ who has been convicted before the magistrates’ court of the offence(s) of _____ and _____ desires to appeal against such conviction(s), has insufficient means to enable him to obtain legal aid in the preparation and conduct of his appeal* and that by reason of exceptional circumstances it is desirable in the interests of justice that he should have such aid*, do hereby grant in respect of him this certificate for legal aid.

Dated this, day of, 20.....

Chief Justice.

* Note. *–Delete the words between asterisks if the conviction is for an offence punishable with imprisonment (other than imprisonment in default only of payment of a fine).*

SCHEDULE 2.

LEGAL ASSISTANCE: FORMS.

FORM G.

Rule 11

LEGAL AID AND ASSISTANCE ACT.

LEGAL ASSISTANCE CERTIFICATE.

This is to certify that of
(herein after called the “assisted person”) is entitled, in accordance with the
Legal Aid and Assistance Act and Rules made thereunder, to legal
assistance as (a) in connection with the following
proceedings

(a) *Insert “plaintiff”, “defendant”, “petitioner”, “intervener”, or as the
case may require.*

This is further to certify that—

1. The assisted person’s solicitor is.....
2. The assisted person’s disposable income has been determined as
£..... and his disposable capital as £.....; and his
maximum contribution
as £.....
3. The assisted person’s contribution has been assessed at £
..... payable,....
4.(b).

(b) *Insert any special conditions.*

Dated this day of, 20.....

[Amended this day of, 20.....]

Registrar.

FORM H.

Rule 17 (3).

LEGAL AID AND ASSISTANCE ACT.

EMERGENCY CERTIFICATE.

This is to certify that

of (hereinafter called the “assisted person”) is entitled, in accordance with the Legal Aid and Assistance Act and Rules made thereunder, to legal assistance as (a).....in connection with the following proceedings

(a)Insert
“plaintiff”,
“defendant”,
“petitioner”,
“intervener”, or
as the case may
require.

This is further to certify that–

1. The assisted person’s solicitor is [(b) *The name and address of the solicitor should be filled in if possible when the emergency certificate is issued, but may be filled in after the emergency certificate has been filed*].....
Of

2. This certificate, being an emergency certificate, remains in force for a period of six weeks from the date hereof, or such other period not exceeding three months as the Registrar may allow, unless it is previously revoked or is replaced by a legal assistance certificate.

Dated this, day of, 20.....

Registrar.

LEGAL AID AND ASSISTANCE ACT.

FORM I.

Rule 22 (2).

IN THE SUPREME COURT OF GIBRALTAR.
IN THE COURT OF FIRST INSTANCE.

No:

Between (Plaintiff) (Petitioner)

and

.....(Defendant) (Respondent)

TAKE NOTICE that a Legal Assistance Certificate dated
Emergency
the, day of,20.....

has been issued to in connection with the following
proceedings

TAKE FURTHER NOTICE that, in consequence thereof, the
.....
in these proceedings is and has been from that date an assisted person.

Dated this day of, 20.....

(signed).....

To

Legal aid and Assistance

LEGAL AID AND ASSISTANCE RULES

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LEGAL AID AND ASSISTANCE ACT.

FORM J.

Rules 18 (3) and 19 (5).

NOTICE OF AMENDMENT, DISCHARGE
OR REVOCATION.

IN THE SUPREME COURT OF GIBRALTAR.

IN THE COURT OF FIRST INSTANCE.

Between.....(Plaintiff) (Petitioner)

and

.....(Defendant) (Respondent)

TAKE NOTICE that the Legal Assistance Certificate
Emergency

dated the day of, 20..... issued on the
.....has, on the day of
..... 20..... been amended/discharged/revoked. The amendment
provides that the Certificate shall not extend to the following proceedings
that the Solicitor acting for the shall be
..... in the place of

Dated this day of, 20.....

(signed).....
Registrar.

To