

Subsidiary Legislation made under ss.13 and 19.

Subsidiary
2018/146

LEGAL ASSISTANCE (AMENDMENT) RULES 2018

(LN. 2018/146)

Commencement **27.6.2018**

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title and commencement.
2. Increase of financial eligibility under section 13 of the Legal Aid and Assistance Act.
3. Amendment to the Schedule to the Legal Aid and Assistance Act.
4. Amendment to the Legal Aid and Assistance Rules.
5. Amendment to the Legal Assistance (Assessment of Resources and Scale of Contribution) Rules.
6. Amendment to the Legal Assistance (Scale of Fees) Rules.
7. Amendment to the Asylum (Procedures) Regulations 2012.

In exercise of the powers conferred on it by sections 13 and 19 of the Legal Aid and Assistance Act, the Government has made the following Rules—

Title and commencement.

1.(1) These Rules may be cited as the Legal Assistance (Amendment) Rules 2018.

(2) Subject to sub-rules (3) and (4), these Rules come into operation on the date of publication and shall have effect for the purpose of grants of legal assistance made as from the date of their coming into force for a period of three years.

(3) If these Rules are not revoked before the expiry of three years from the date of commencement, they shall continue in force.

(4) 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.

Increase of financial eligibility under section 13 of the Legal Aid and Assistance Act.

2.(1) The figure setting out the maximum income for which a person shall be eligible for legal assistance shall be-

- (a) where the annual income to be assessed is that of a person in a household with a single income, 50% of the sole average income in Gibraltar as set out in the Employment Survey Report for the year as published by the Statistics Office of the Government of Gibraltar;
- (b) where the annual income to be assessed is that of a person living with a spouse or civil partner whose resources are required to be aggregated to his, 75% of the sole average income in Gibraltar as set out in the Employment Survey Report for the year as published by the Statistics Office of the Government of Gibraltar.

(2) The maximum capital amount which a person may have and still be eligible for legal assistance shall be-

- (a) up to £10,000; and
- (b) up to £50,000 of equity in his principle residential property.

Amendment to the Schedule to the Legal Aid and Assistance Act.

3.(1) The Schedule is amended in accordance with this rule.

(2) In Part I-

- (a) paragraph 1, substitute “Proceedings in any of the following courts-” with “Subject to paragraphs 3, 4 and 5, proceedings in any of the following courts-”;
 - (b) after paragraph “**1B.**” insert-
“**1C.** Proceedings before the Principal Immigration Officer or Head of Civil Status and Registration Office.”;
 - (c) substitute paragraph 2 with-
“**2.** Subject to paragraphs 3, 4 and 5, proceedings before any person to whom a case is referred in whole or in part by any courts mentioned in paragraph 1 above.”; and
 - (d) after paragraph 2 insert-
“**3.** Proceedings subject to “scale fees” (see Legal Assistance (Scale of Fees) Rules)-
 - (a) immigration and asylum matters before the Principal Immigration Officer or Head of Civil Status and Registration Office under the Immigration, Asylum and Refugee Act;
 - (b) divorce proceedings (where there are no dependent children of the marriage);
 - (c) probate and administration disputes;
 - (d) personal injury claims where the amount of damages sought is under £50,000 and the defendant is not Her Majesty’s Government of Gibraltar, an agency or authority thereof;
 - (e) appeals from the Employment Tribunal to the Supreme Court.
- 4.** Where proceedings relate to conveyancing, or disputes relating to real or personal property, fees payable under legal

assistance for such matters shall be limited to the payment of fees for mediation.

5. Proceedings assessed and paid on hourly rates-

- all other civil and constitutional matters not within paragraph 3 above or Part II below.”.

(3) In Part II-

- (a) paragraph 1(d) substitute the “.” with a “;”;
- (b) after paragraph 1(d) insert-
 - “(e) Bankruptcy and insolvency proceedings;
 - (f) Consumer and contractual disputes;
 - (g) Company or partnership disputes.”; and
- (c) after paragraph 5 insert–

“5A. Subject to Part I, paragraph 4, conveyancing or disputes relating to real or personal property are excepted proceedings, except where such claims arise in a judicial review or constitutional action against Her Majesty’s Government of Gibraltar.”.

Amendment to the Legal Aid and Assistance Rules.

4.(1) The Legal Aid and Assistance Rules are amended as follows.

(2) After rule 6 insert-

“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.”.

(3) Substitute rule 7 with-

“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.”.

(4) In rule 16-

(a) in sub-rule (1)(a), substitute “£750 a year” with “the relevant amount as set out in rule 2(1) of the Legal Assistance (Amendment) Rules 2018”;

(b) substitute sub-rule (1)(c) with-

“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”; and

(c) in sub-rule (1)(e) substitute “aid” with “assistance”.

(5) In rule 17(4) substitute “£750 per year” with “the relevant amount as set out in rule 2(1) of the Legal Assistance (Amendment) Rules 2018”.

(6) Substitute rule 19(2)(f) with-

“(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;”.

(7) In the heading to rule 23 substitute “**aid**” with “**assistance**”.

(8) After rule 24(4) insert-

“(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.”.

Amendment to the Legal Assistance (Assessment of Resources and Scale of Contribution) Rules.

5.(1) The Legal Assistance (Assessment of Resources and Scale of Contribution) Rules are amended as follows.

(2) Substitute sub-rule 3(a) and (b) with-

- “(a) a contribution of 12.5% of the person’s annual income; and
- (b) a contribution of 12.5% of the person’s capital.”.

(3) In rule 4-

- (a) sub-rule (3)(a) after “date of application” insert “subject to a maximum total amount of £6,000”;
- (b) sub-rule (3)(c) substitute “£2,000” with “£50,000”;
- (c) sub-rule (3)(e) substitute “Social Security (Employment injuries insurance) Act” with “Social Security (Employment Injuries Insurance) Act”;
- (d) sub-rule (3)(f) insert “and” after “;” ; and
- (e) delete sub-rule (3)(g) in its entirety.

(4) In rule 5-

- (a) sub-rule (3)(d) after “dwelling house” insert “subject to a maximum total amount of £6,000”;
- (b) substitute sub-rule (3)(e) with-
 - “(e) the amount of mortgage repayments and rates payable in respect of his dwelling house subject to a maximum total amount of £6,000;” and
- (c) sub-rule (3)(f) after “loan” insert “subject to a maximum total amount of £2,000”.

(5) Substitute rule 6 with-

“Spouse or civil partner.

6. Any resources of a person’s spouse or civil partner shall be treated for the purposes of these Rules as that person’s resources unless that person is legally separated from his spouse or civil partner.”.

- (6) Delete Schedule 1 and Schedule 2 in their entirety.

Amendment to the Legal Assistance (Scale of Fees) Rules.

6.(1) The Legal Assistance (Scale of Fees) Rules are amended as follows.

- (2) Before the heading to rule 2 insert the heading “**PART 1**”.

- (3) Substitute rule 2 with-

“2. The fee payable to a barrister or solicitor in respect of a report submitted to the Registrar under section 14 of the Act shall be £150.”.

- (4) Before the heading to rule 3 insert the heading “**PART 2**”.

- (5) After rule 9 insert the following Part-

“PART 3

Scale fee proceedings.

10. This Part applies for the purpose of the fees payable to barristers and solicitors giving legal assistance to proceedings listed under Part I, paragraph 3 of the Schedule to the Act.

11.(1) Upon commencement of this Part, the fees to be allowed to barristers and solicitors giving legal assistance in connection with proceedings pursuant to rule 10 above, shall be taxed in accordance with or within the limits set out in this rule-

- (a) On assignment (to include the taking of instructions):
From £75 to a maximum of £500
- (b) For attending a case management hearing or other mention in the Supreme Court: Up to a maximum of £150
- (c) For attending in chambers on an application: Up to a maximum of £250
- (d) For appearing in a Court, other than the Court of Appeal or the Privy Council—

(A) On an application: Up to a maximum of £350

- (B) On a trial–
 - (i) for the first period of five hours or part thereof: From £400 to a maximum of £1,000
 - (ii) for each subsequent five hours or part thereof: From £350 to a maximum of £900

- (e) For appearing in the Court of Appeal–
 - (A) On an application: Up to a maximum of £450
 - (B) On an appeal from the Supreme Court–
 - (i) For the first period of five hours or part thereof: From £450 to a maximum of £1,250
 - (ii) For each subsequent period of five hours of part thereof:
From £350 to a maximum of £1,000

- (f) For appearing in the Privy Council–
 - (A) On an application: Up to a maximum of £550
 - (B) On an appeal from the Court of Appeal–
 - (i) For the first period of five hours or part thereof: From £550 to a maximum of £1,500
 - (ii) For each subsequent period of five hours or part thereof:
From £400 to a maximum of £1,250

- (g) For preparation throughout the conduct of the case for each application–

- (A) In a court, other than the Court of Appeal or the Privy Council:
From £150 to a maximum of £2,250
- (B) In the Court of Appeal: From £500 to a maximum of £3,000
- (C) In the Privy Council: From £1,000 to a maximum of £6,000.
- (2) In assessing the level of fees payable to a barrister or solicitor in the case of any part period of hours, the taxing officer shall have regard to the time involved in calculating the proportion of fees.
- (3) In taxing the sums payable to a barrister or solicitor under this rule, the taxing officer shall take into account all the relevant circumstances, including the seniority of the barrister or solicitor, the nature, importance, complexity and difficulty of the work and the time involved, including time lost as a result of any adjournment, other than an adjournment for the convenience of the said barrister or solicitor.
- (4) In addition to the fees payable under these Rules, there shall be allowed to a barrister or solicitor all disbursements where—
- (a) it is in the interests of justice to do so;
 - (b) it is reasonable for the representative to incur the disbursement for the purpose of providing legal assistance; and
 - (c) the amount of the disbursement is reasonable.
- (5) Notwithstanding sub-rule (4), a barrister or solicitor shall not make disbursements on behalf of any person in excess of £100 without the previous approval in writing of the taxing officer.
- (6) Where a taxing officer has, in accordance with sub-rule (5), approved the instruction of a barrister or solicitor as a disbursement in a case, the amount of the disbursement allowed for the barrister's or solicitor's fees shall be calculated in accordance with the fees set out in this rule.
- (7) Where legal assistance has been granted in a case within this Part, a Judge of the Supreme Court may make a finding on application by a barrister or solicitor, at any time until the final disposition of the case (including every appeal therefrom), that the case is likely to be or has been of exceptional difficulty or complexity.

- (8) In determining whether a case is of exceptional difficulty or complexity a Judge shall have regard to all relevant circumstances including the nature and importance of the case, whether the case involves a difficult point of law, whether the case requires a high volume of work and the complexity, length or urgency of the case or any aspect of it.
- (9) If pursuant to sub-rule (7) a Judge makes a finding of exceptional difficulty or complexity, then—
- (a) he shall endorse the certificate to that effect; and
 - (b) subject to sub-rule (10), the taxing officer shall allow such fees as appear to him to represent reasonable remuneration for the work to be done, including for the preparation of the conduct of the case.
- (10) The fees allowed under sub-rule (9)(b) shall not be more than two times the fees prescribed in paragraphs (a) to (g) of sub-rule (1).
- (11) On becoming aware that a case is one likely to lead to an application under sub-rule (7), a barrister or solicitor shall notify the taxing officer in writing of that fact.
- (12) Where an application made under sub-rule (7) has been refused, any subsequent application to a Judge under that sub-rule in respect of the same case may only be made following a material change in circumstances in the nature of the case.
- (13) A Judge may, following a material change of circumstances, and where he deems it appropriate, revoke a finding that a case is of exceptional difficulty or complexity and shall on making such revocation cause the endorsement of the certificate under sub-rule 9(a) to be removed.
- (14) A barrister or solicitor aggrieved by a decision of a taxing officer may appeal the decision to the Chief Justice, whose decision shall be final.
- (15) Notwithstanding any other provision in this or any other enactment, the total fees payable to counsel in respect of legal assistance for proceedings to which scale fees apply in the—
- (a) Magistrates Court shall be capped at £5,000;

- (b) Supreme Court shall be capped at £10,000;
- (c) Court of Appeal shall be capped at £15,000; and
- (d) Privy Council shall be capped at £20,000.”.

Amendment to the Asylum (Procedures) Regulations 2012.

7. The Asylum (Procedures) Regulations 2012 are amended by substituting regulation 14(2) with-

- “(2) Where under Part I, paragraph 1C of the Schedule to the Legal Aid and Assistance Act an applicant for asylum seeks free legal assistance or representation or both, he shall be considered to be ordinarily resident in Gibraltar for the purposes of rule 6(2) of the Legal Aid and Assistance Rules.”.