

GUERNSEY LEGAL AID SERVICE
Edward T Wheadon House, Le Truchot, St Peter Port, Guernsey GY1 3WH

Telephone (01481) 227530

Email: legalaid@gov.gg

The Legal Aid Schemes are established under The Legal Aid (Bailiwick of Guernsey) Law, 2003, The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 and the Legal Aid (Guernsey and Alderney) Rules, 2019.

Guernsey Legal Aid Service ("GLAS") is the name of the service that administers the Legal Aid Schemes. GLAS is run by the Legal Aid Administrator who is an independent statutory official appointed by the States of Guernsey.

CIRCULAR 3 – THE CRIMINAL LEGAL AID SCHEME: SCOPE AND LEGAL MERITS

This Circular specifies the eligibility criteria, scope, legal merits test and the conditions that apply in relation to applications for legal aid in criminal proceedings under the Criminal Legal Aid Scheme.

1. Definitions

In this Circular the following definitions apply:

"the Administrator" means the person who has been appointed by the States of Guernsey to the Office of the Legal Aid Administrator in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003.

"Advocate" means an Advocate of the Royal Court of Guernsey.

"the Alderney Firms" means those specific firms currently contracted under separate arrangements with the Legal Aid Administrator for the provision of legally aided services in Alderney.

"applicant" or "assisted person" means a person that is applying, who has applied for, or who has been granted legal advice, assistance and representation under the Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

"application" means receipt by the Administrator of the relevant legal aid application forms and all supporting documentation.

"certificate" means a legal aid certificate that has been issued by the Legal Aid Administrator to an applicant in connection with substantive criminal proceedings under the Criminal Legal Aid Scheme.

“contribution” means the percentage of legal costs and disbursements that an applicant has been assessed to pay towards their legal proceedings under the Criminal Legal Aid Scheme.

“discharged” means when a legal aid certificate has been cancelled from a specific date. This happens automatically when the work under a legal aid certificate has concluded. A certificate can also be discharged when an assisted person becomes financially ineligible or fails to cooperate with his Advocate or the Administrator.

“financial means test” means the application of the standard means test as specified. “GLAS” (Guernsey Legal Aid Service) refers to the Legal Aid Administrator and/or any member of staff.

“Green Form Scheme” or “Green Form” means legal advice and assistance provided under the Legal Aid, Advice and Assistance Scheme.

“Guernsey firms” are all Guernsey Advocates’ firms that opt in to provide legal services under the Schemes.

“legal aid” means legal advice, assistance and representation provided to the applicant under the Criminal Legal Aid Scheme by way of a Legal Aid Certificate issued by the Administrator.

“legal aid Schemes” means the Legal Aid, Advice and Assistance (Green Form) Scheme, the Criminal Legal Aid Scheme and the Civil Legal Aid Scheme.

“legal merits test” means the legal merits test as specified in this Circular.

“the Ordinance” means The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“required documentation” means all the documentation required by the Administrator to undertake a financial assessment of an applicant to ascertain their eligibility for legal aid.

“revoked” or “revocation” means when a legal aid certificate is not only cancelled from a specific date but is also deemed never to have existed

If a certificate is revoked, the assisted person becomes liable for the costs of all the work undertaken by the Advocate under the Scheme and the Administrator will seek from the assisted person full reimbursement of all costs incurred under the certificate and any associated green forms.

“Royal Court” means the Royal Court of Guernsey; in criminal cases it comprises two divisions namely the Full Court and the Ordinary Court.

“the Scheme” means the Criminal Legal Aid Scheme as established under The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

“specified” means rules specified by the Committee *for* Employment and Social Security.

“suspended” means that the Administrator may temporarily suspend a certificate pending receipt of financial or other information from either the applicant or the Advocate. During a period of suspension, no fees or disbursements may be incurred by the Advocate under the Schemes.

PART I GENERAL PRINCIPLES

2. Purpose

The purpose of the Criminal Legal Aid Scheme as established under the Ordinance is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified criminal proceedings, subject to specified conditions.¹

3. Alderney Arrangements

3.1 There are special arrangements under the Schemes in respect of applicants who are Alderney residents.

3.2 Only the Alderney Firms will be remunerated by GLAS for:

- (a) Any Green Form that falls within the Scope of the Legal Aid, Advice and Assistance (Green Form) Scheme,
- (b) Duty Advocate and criminal cases before the Court of Alderney Police Court that fall within the scope of the Criminal Legal Aid Scheme.

3.3 Any Guernsey firm may be remunerated under the Schemes to advise, assist and represent an applicant who usually resides in Alderney in proceedings before the Guernsey Royal Court, such as serious criminal cases.

3.4 Any Guernsey firm may be remunerated under the Criminal Legal Aid Scheme to provide telephone advice and assistance under the Duty Advocate arrangements to an applicant who usually resides Alderney or to advise, assist and represent such an applicant in criminal proceedings before the Guernsey Royal Court, in relation to a serious criminal case.

4. General Limitations and Extent

4.1 Advice, Assistance or representation under the Scheme is not available to legal proceedings before a court outside Guernsey or Alderney, or any matter where the relevant governing or applicable law, is a law other than the law of Guernsey or Alderney, and the matter is a matter that is not justiciable before a court in Guernsey or

¹ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S6

Alderney.

- 4.2 Legal aid will only be available to individuals; not companies, charities or groups of people.
- 4.3 Legal aid will only be available in respect of individuals who have instructed an Advocate; funding, including any disbursements, will not be provided direct to individuals or paid out on their behalf where they are acting as a litigant in person.
- 4.4 A litigant in person means an individual who is a party to legal proceedings and who exercises their right to conduct legal proceedings on their own behalf, without the assistance of, or representation by, an Advocate.
- 4.5 Legal aid may be granted for proceedings before any Bailiwick court in favour of any individual charged with a criminal offence provided the standard means test as specified and the legal merits test as specified are both met.
- 4.6 A non-resident applicant remanded in custody by a Bailiwick court is treated as being resident in Guernsey for the purposes of the Scheme.
- 4.7 A resident applicant or a non-resident applicant who is remanded in custody in the Bailiwick must fully complete the required financial documentation.
- 4.8 A non-resident who is not remanded in custody will be provided with a specific overseas financial application form by the Administrator.
- 4.9 Criminal legal aid is not available to victims of crime or witnesses unless they are also a defendant.
- 4.10 The Administrator may grant a certificate in respect of part only of the proceedings in respect of which legal aid has been applied for. The certificate will detail the limitations and conditions of the grant of legal aid.
- 4.11 Legal Aid will not be granted to enable an applicant to obtain advice, assistance and representation or a second opinion from an Advocate on a matter which is already covered under a certificate with a different Advocate.
- 4.12 Legal aid will not be available where an applicant has available to them:
 - (a) other rights and facilities making it unnecessary for them to obtain legal aid, or
 - (b) a reasonable expectation of receiving financial or other help from a body of which they are a member.
- 4.13 Legal aid can only be granted under the scheme once a criminal charge has been laid against the applicant. Advice and assistance can be provided to an applicant under the Green Form Scheme prior to charge, subject to the limitations of that Scheme.

5. Contributions

- 5.1 Any contribution in criminal matters is collected by the Administrator once the criminal proceedings are concluded.
- 5.2 Repayment of contributions to the Administrator is required even if the defendant is acquitted or the case against the defendant is not proceeded with for any reason.
- 5.3 Any contribution assessed to be payable by the applicant in quasi civil /criminal proceedings is collected by the Administrator as specified at paragraph 26.

6. Issue date of certificate

Legal aid is not available to any applicant until the Administrator is satisfied that; the applicant meets the specified financial eligibility test and that the proposed case satisfies the specified legal merits test. The date upon which the Administrator is satisfied on these elements is recorded as the "issue date" on the certificate. Work undertaken before the issue date of legal aid will not be remunerated under the Scheme.

7. Conditions

The Administrator may require an applicant to comply with such conditions as are considered expedient to enable the Administrator to be satisfied from time to time that:

- (a) the applicant continues to be financially eligible for legal aid, and
- (b) the appropriate legal merits test continues to be met.

8. Reporting requirements

- 8.1 It shall be the duty of an applicant and an Advocate acting on behalf of an applicant where the facts are within the Advocate's knowledge, immediately to inform the Administrator of:
 - (a) any change in that applicant's circumstances, financial or otherwise,
 - (b) any change in the circumstances, financial or otherwise, so far as known to that applicant of any other person with whom that applicant is jointly concerned, or who has the same interest in, the matter, or
 - (c) any circumstance, financial or otherwise, which may affect the Administrator's determination that the applicant has probable cause or that it is reasonable in the particular circumstances of the case that that person should receive, or continue to receive, legal aid.
- 8.2 Where an Advocate acting for an applicant has reason to believe that that applicant has not complied with the duty under paragraph 8.1 above, the Advocate shall forthwith

draw this matter to the attention of the Administrator.

- 8.3. No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of, or drawing her attention to, any matter specified in paragraphs 8.1 and 8.2 above.
- 8.4 The Administrator from time to time may directly request from the applicant or an Advocate acting for the applicant information relating to any change in circumstances, financial or otherwise.
- 8.5 No Advocate shall be precluded, by reason of any privilege arising out of the relationship between the Advocate and the applicant from informing the Administrator of or drawing her attention to, any matter specified in paragraph 8.4 above.
- 8.6 If an applicant fails to provide information requested by the Administrator, within any time period specified, the Administrator may suspend, revoke or discharge the certificate. Where a certificate is revoked, the Administrator may recover from the applicant all costs and disbursements paid or to be paid to their advocate.

9. Recovery and preservation of property/assets

If an applicant recovers, preserves or has their entitlement to any property/asset confirmed with the use of their certificate and/or related Green Forms, the Administrator requires the reimbursement of all costs and disbursements incurred under the Schemes.

10. Costs

If a Court awards costs against an applicant, the Administrator will not accept liability to pay those costs.

**PART II
ELIGIBILITY FOR LEGAL AID**

11. Requirement for Financial Means and Legal Merits Tests

- 11.1 The Scheme is means tested and the Administrator requires the production of such documents, accounts or information (“required documentation”) from all applicants for legal assistance under the provisions of the Scheme as may be required for the purposes of properly assessing or reassessing any application for legal assistance and to defer determination until any such requirement is satisfied.
- 11.2 Where a reassessment results in any amendment to the terms of a certificate, any amendments, whether in respect of financial eligibility or meeting the legal merits test, shall be applied to the certificate from the date upon which the Administrator determines the reassessment.

11.3 Before legal aid can be granted, every legal aid application, must meet the following two tests:

- (a) The *standard means test* as specified to determine whether the applicant's resources are such that, according to specified financial criteria, the applicant cannot afford to pay for legal assistance, and
- (b) The *legal merits test* to determine whether in all the circumstances of the case it is in the interests of justice that legal aid should be made available to the applicant.

11.4 Both tests are assessed and determined by the Administrator following receipt of all required documentation.

12. Legal merits test

12.1 The factors to be taken into account by the Administrator in determining whether it is in the interests of justice that criminal legal aid be made available in any case shall include:

- (a) in the event of a conviction, it is likely that the court would impose a sentence which would either deprive the accused of their liberty, or lead to loss of their livelihood, or seriously damage their reputation,
- (b) the case may involve consideration of a substantial question of law,
- (c) the accused may be unable to understand the proceedings or to state their own case, either through lack of knowledge of English, or through mental or physical disability,
- (d) the nature of the defence involves the tracing and interviewing of potential defence witnesses or expert cross-examination of the prosecution witnesses,
- (e) it is in the interests of someone other than the accused that the accused be legally represented,
- (f) the defence to be advanced by the accused does not appear to be frivolous.

12.2 The interests of justice are automatically met where:

- (a) The Court of Alderney refers a matter to the Ordinary Division of the Royal Court, the presumption is that a custodial sentence is in contemplation and thus the legal merits test is satisfied, or
- (b) Where the applicant is committed for trial before the Royal Court at the request of the Law Officers of the Crown.

13. Discretion

The Legal Aid Administrator may use discretion to grant legal aid under this Scheme when the applicant is not financially eligible or to waive or reduce a contribution if, in the Administrator's opinion, the interests of justice require it, in accordance with Article 6 of the European Convention on Human Rights.

14. Administrator's obligation to give reasons

If the Administrator refuses legal aid, or exercises discretion to grant it as at or to waive a contribution, then the Administrator shall provide reasons.

15. Administrator's reconsideration of decisions relating to the financial eligibility of an applicant

There is no statutory right of appeal against a financial determination by the Administrator. However an applicant may request the Administrator to reconsider the Administrator's financial determination that the applicant does not qualify financially or no longer qualifies financially for legal aid under the Scheme.

16. Administrator's review of decisions other than relating to the financial eligibility of the applicant

An applicant may require the Administrator to review a decision that the applicant does not qualify or no longer qualifies for legal aid under the Scheme.²

17. Legal Aid Commissioner's review of decisions of the Administrator

If an applicant is not satisfied with the outcome of the review of a decision by the Administrator, other than in relation to a financial determination, the applicant may apply to the Legal Aid Commissioner for a review of the Administrator's decision.³

18. Appeal from Legal Aid Commissioner's Review

An appeal from a decision of the Commissioner lies to the Royal Court on a question of law.⁴

19. Judicial Review of a decision of the Administrator

Any application by a person for legal aid to commence proceedings to Judicially Review a decision of the Administrator will be subject to the ***standard means*** test and the civil merits test.

² The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S19

³ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S20

⁴ The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 S20(6)

In such circumstances, the assessment of the legal merits of the application for a legal aid certificate to judicially review a decision of the Administrator will be considered by a party independent of the Administrator.

PART III

SCOPE-TYPES OF CRIMINAL LEGAL AID AVAILABLE UNDER THE SCHEME

20. Definitions under this section

“Court Duty Advocate” is that Advocate in attendance at sittings of the Magistrates Court or the Court of Alderney Police Court.

“detainee/volunteer” means any person detained by the Guernsey Police or Guernsey Border Agency or any person attending the police/border agency as a volunteer in respect of a matter for which they could otherwise be arrested.

“Out of hours Duty Advocate” means an Advocate from the firm which is listed either on the Out of hours Duty Advocate Rota as first or second Duty Advocate on call for out of hours work.

21. Duty Advocate Services in Guernsey

- (a) *Out of Hours Duty Advocate Rota*

Free legal advice is available from the Duty Advocate during the out of hours periods to a detainee/volunteer, in respect of a matter for which they could otherwise be arrested.

 - (i) Legal advice may be provided by the Duty Advocate by telephone or by personal attendance if the presentation of the client or the seriousness of the matter requires it.
 - (ii) The periods covered by the out of hours duty Advocate Rota are specified.
 - (iii) Free legal advice under the Duty Advocate arrangements can only be provided to a detainee/volunteer during the period of their detention. It therefore cannot go beyond a detainee/volunteer’s first appearance before the Magistrates Court.
 - (iv) Legal advice provided under 21(a) is free; no financial means test will be applied providing that the person requiring advice consults the Rota Duty Advocate. If the person requiring advice wishes to consult an Advocate of their own choice, this will not be remunerated under the Scheme.
- (b) *Office Hours Arrangements*
 - (i) There is no specific Duty Advocate rota applicable during office hours. The Guernsey Bar maintains a list of Advocates’ firms willing to take calls

from detainees/volunteers during normal office hours. These firms are also willing to take calls out of hours when it is not possible to use Duty Advocate.

- (ii) Where a detainee/volunteer requires advice and assistance from an Advocate during office hours, current arrangements are that the police or border agency will, in the first instance, contact one of the Advocates who has confirmed, via the list, their willingness to take calls during the day. If none of the listed firms can provide advice by telephone or attend if required, can another firm, not on the Duty Advocate rota or the list, be remunerated under the Scheme. In such a case, the Advocate should obtain specific clearance from the Administrator before assisting (or as soon as practicable), as they may not be remunerated if a Duty Advocate was, in fact, available.
- (iii) If a detainee /volunteer requests a particular Advocate who is not noted on the list as willing to assist during office hours, then that Advocate will not be remunerated under the Scheme.
- (iv) Advice provided under 21(b) is free. No financial means test will be applied provided that the person requiring advice consults one of the listed Advocates as at 21(b)(i). If the person requiring advice wishes to consult an Advocate of their own choice, who is not on the list, this will not be remunerated under the Scheme.

22. Duty Advocate Services in Alderney

- (a) *Out of Hours Duty Advocate Rota*
Free legal advice is available from the Duty Advocate to any detainee/volunteer in Alderney.
 - (i) The initial phone calls and any telephone advice to a detainee/volunteer can be provided by the Rota Duty Advocate, who does not have to be member of the Alderney Firms. If it is essential for the Duty Advocate to travel to Alderney to provide advice or representation in court to a detainee then the matter must be referred to one of the two Alderney Firms that have an arrangement with the Administrator to provide legal aid services in Alderney.
 - (ii) In the event of a serious incident with a requirement for a number of Advocates to attend Alderney to provide advice to a detainee/ volunteer, the Administrator must be contacted in advance of any work being undertaken by any Advocate.
 - (iii) Advice provided under 22(a) is free; no financial means test will be applied provided that the person requiring advice consults the Duty Advocate. If the person requiring advice wishes to consult an Advocate of their choice, this will not be remunerated under the Scheme.

(b) *Office Hours Arrangements*

- (i) There is no specific Duty Advocate rota applicable during office hours. The Guernsey Bar maintains a list of Advocates' firms willing to take calls from detainees/volunteers during normal office hours. These firms are also willing to take calls out of hours when it is not possible to use Duty Advocate.
- (ii) Where a detainee/volunteer in Alderney requires advice from an Advocate during office hours, current arrangements are that the police or border agency will, in the first instance, contact one of the Advocates who has confirmed, via the list, their willingness to take calls during the day. If none of the listed firms can provide advice by telephone or attend if required, another firm, not on the Duty Advocate rota or the list, be remunerated under the Scheme. In such a case, the Advocate should obtain specific clearance from the Administrator before assisting (or as soon as practicable), as they may not be remunerated if a Duty Advocate was, in fact, available.
- (iii) The initial phone calls and any telephone advice can be provided by any Advocate who is on the list as at 22(b) (i), who does not have to be member of the Alderney Firms. However if a detainee /volunteer requests a particular Advocate who is not on the list as willing to assist during office hours, then that Advocate will not be remunerated under the Scheme.
- (iv) If it is essential for the Duty Advocate to travel to Alderney to provide advice, then the matter must be passed to one of the two Alderney Firms that have an arrangement with the Administrator to provide legal aid services in Alderney.
- (v) Advice provided under 22(b) is free. No financial means test will be applied on condition that the person requiring advice consults one of the listed Advocates as at 22(b) (i). If the person requiring advice wishes to consult an Advocate of their own choice, who is not on the list, this will not be remunerated under the Scheme.

23. Court Duty Advocate - General provisions

- 23.1 The Court Duty Advocate can provide advice, assistance and representation, free of charge at the time of the court sitting to a defendant who is otherwise unrepresented. This is limited to only what is necessary for the immediate representation of the defendant at court
- 23.2 Only one Court Duty Advocate for each court sitting will be remunerated under the Scheme unless there are exceptional circumstances such that two Court Duty advocates

are necessary. Exceptional circumstances may be when there is a conflict present or the Court has requested the attendance of more than one Court Duty Advocate.

23.3 In order to take advantage of the free Court Duty Advocate, the defendant requiring advice and representation must use the Court Duty Advocate provided. If the defendant wishes to consult an Advocate of their own choice, this will not be remunerated under the Scheme.

23.4 *Guernsey*

There is a Court Duty Advocate present at most sittings of the Magistrate's and Juvenile Courts.

23.5 *Alderney*

There are separate arrangements for the provision of Legal Aid services in Alderney including in relation to the Court Duty Advocate in Alderney. One of the two Alderney firms attends the scheduled monthly sittings of the Police Court in Alderney under separate arrangements with the Administrator. No Advocate, other than from one of the Alderney Firms may represent a defendant as Court Duty Advocate under the Scheme unless the Administrator has approved the same in advance.

24. Certificates for Criminal Legal Aid in the Magistrates Court, Court of Alderney and Royal Court

24.1 Every application for legal aid, including where the applicant is remanded in custody, is subject to:

- (a) The standard means test as specified , and
- (b) The legal merits test is specified.

24.2 Both tests must be met for a certificate to be granted.

24.3 All applicants, included those who are remanded in custody, must submit the required documentation to the Administrator for their application to be considered.

24.4 An application for legal aid can only be submitted to the Administrator for consideration once a charge has been laid against the applicant.

25. Alderney Court

25.1 Only an Alderney Firm will be remunerated under the Scheme in respect of criminal proceedings under a certificate in the Alderney Court. In exceptional circumstances the Administrator may consider remunerating a non-Alderney Advocate /Firm.

25.2 Exceptional circumstances shall be as determined by the Administrator.

**PART IV
SCOPE OF THE SCHEME**

26. Excluded Matters

26.1 Certain matters are excluded from receiving legal aid for representation in Court either under the Green Form Scheme or under the Scheme unless the applicant is unable to conduct their own defence due to, language difficulties, mental /physical disability or other.

26.2 *Excluded matters*

No representation in the Magistrates Court or Alderney Court is permitted under the Scheme for the following matters:

- (a) Any offence where the accused does not appear and wishes, for their own convenience, to be represented,
- (b) Minor motoring offences unless in the event of a conviction, it is likely that the court would impose a sentence which would deprive the accused of licence and livelihood,
- (c) A guilty plea for driving under the influence of drink or drugs unless, it is likely that the court would impose a sentence which would deprive the accused of their liberty,
- (d) A guilty plea for the possession of small quantities of a Class B or C drug unless it is likely that the court would impose a sentence which would deprive the accused of their liberty,
- (e) Fixed penalty offences under The Offences (Fixed Penalty) (Guernsey) Law, 2009 such as: failure to wear a seat belt; offences in relation to vehicles in disc parking places; littering; driving a car whilst holding a mobile telephone, etc.

26.3 In respect of the matters at 26.1 (a) to (d), a person may make use of the services of the Duty Advocate or seek advice and assistance, but not representation in court, under the Green Form Scheme provided the person is financially eligible.

26.4 The following matters are not within the scope of the Scheme:

- (a) *Reviews of Prison adjudications*
In appeals against an award of forfeiture or remission of sentence, or against a finding of guilt resulting in such an award, or in any other case where the interests of justice so require, the prisoner may obtain legal advice under Green Form only, to draft/redraft the written review,
- (b) *Parole – Review of dossier*
A Prisoners who wishes to apply for parole or has been recalled and who requires legal advice in order to review their dossier, is entitled to legal advice and assistance under the Green Form Scheme only.

27. Administrator's Discretion

- 27.1 The following does not fall within the Scheme but may none the less be admitted to legal aid at the discretion of the Administrator:
- 27.2 Defence representation for purposes of cross-examination under The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law.
- 27.3 Where sections 43 and 44 of The Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 apply and an Advocate has been appointed by the Court to cross-examine the complainant in the interests of the accused, the Administrator may grant legal aid to the accused limited to the cross examination of the complainant.
- 27.4 Where no application for legal aid in connection with the proceedings has been submitted to the Administrator by the accused or where the accused fails to provide the required information and sections 43 and 44 as above apply, the Administrator may nevertheless grant legal aid to the accused limited to the cross examination of the complainant.

28. Appeals

- 28.1 Legal Aid for criminal appeals from a decision of the Magistrate's Court and the Court of Alderney to the Royal Court is governed by the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988. ("the Law"):
- (a) An Appeal Aid Certificate is granted by the Magistrate's Court or the Court of Alderney.
 - (b) Any Appeal Aid Certificate is effective from the given date and is not retrospective.
 - (c) Any means test in respect of an Appeal Aid Certificate is administered by the court that grants it.
- 28.2 Section 4(5) of the Law states that remuneration of an Advocate under section 4 shall be paid by the States (of Guernsey). Under current arrangements the remuneration of an Advocate who represents a person who has been granted an appeal aid certificate under section 4 is determined and paid by the Administrator.
- 28.3 Where a defendant wishes to appeal or oppose an appeal arising from a decision of the Magistrate's Court, it is acceptable to the Administrator for reasonable costs incurred for preliminary advice to the client regarding the appeal and completion and submission of the Notice of Appeal to be claimed **either** under any existing criminal certificate for the index offence, subject to taxation **or** under a new Green Form where there has been a change of Advocate.

- 28.4 In appeals from the Royal Court to the Court of Appeal, (Criminal Division) any legal aid is both granted and remunerated by The Registry of Appeals under the Court of Appeal (Guernsey) Law, 1961 Part III and the Administrator will not remunerate any work that falls to be paid under the jurisdiction of the Court of Appeal (Guernsey) Law, 1961, Part III.
- 28.5 Reasonable costs incurred, subject to taxation, to consider and advise on the merits of an appeal will be remunerated by the Administrator under any existing certificate for the index offence.
- 28.6 If there has been a change of Advocate between the index offence and potential appeal, the Administrator will permit remuneration under one Green Form for the new Advocate to advise on the merits of an appeal.
- 29. Appeal to the Judicial Committee of the Privy Council**
- 29.1 Appeals from the Guernsey Court of Appeal (Criminal Division) are with leave, heard by The Judicial Committee of the Privy Council.
- 29.2 There is no statutory basis in Guernsey for the granting of legal aid for such appeals. However, if the applicant is financially eligible under the terms of the Scheme and it is in the interests of justice that legal aid be granted to the applicant, the Administrator may none the less grant legal aid subject to such limitations, terms and conditions as determined by the Administrator.
- 30. Quasi-civil/criminal matters.**
- 30.1 A number of matters come before the Court that fall into a quasi-civil/criminal category. These do not involve the determination of guilt nor do they consider sentences. Examples include confiscation of property allegedly obtained through criminal activity, deportation, confiscation of goods found on premises when the owner cannot account for them.
- 30.2 Application for legal aid in respect of such quasi-civil/criminal cases is made through the Civil Legal Aid Scheme.
- 30.3 Any contribution to be paid by the assisted person under a quasi- civil/criminal certificate will be treated as a contribution payable in criminal proceedings and will be collected by the Administrator at the conclusion of the case.

Dated this 4th day of April, 2022



P. J. ROFFEY
President of the Committee for Employment & Social Security
For and on behalf of the Committee

A handwritten signature in black ink, appearing to be 'LH Haywood', written in a cursive style.

L. H. HAYWOOD
Legal Aid Administrator