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Guernsey

Ordinance of the States

**XLII
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Laid before the States 28th November, 2018

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

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

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

THE STATES, in pursuance of their Resolutions of the 25th July 2001^a and 26th May, 2005^b and in exercise of the powers conferred on them by sections 4(j) and (k), 14, 15, 16, 17 and 30 of the Legal Aid (Bailiwick of Guernsey) Law, 2003^c, and all other powers enabling them in that behalf, hereby order:-

PART I

TERMINATION OF OBLIGATIONS OF STATES AND ESTABLISHMENT OF THE SCHEMES

Termination of obligations of the States under relevant contracts.

1. (1) The Administrator may terminate the obligations of the States under any relevant contract, by notice in writing given to any person who is, together with the States, a party to any such contract.

(2) Upon termination of a relevant contract, the Administrator -

(a) shall have the same obligations to which the States were subject, and

^a Article VI of Billet d'État No. XVII of 2001.

^b Article IV of Billet d'État No. VI of 2005.

^c Ordres en Conseil Vol. XLIV (1), p. 104.

- (b) may exercise upon behalf of the States the same rights which were exercisable by the States,

under the contract immediately prior to its termination.

(3) For the purposes of this section and section 3, a "**relevant contract**" is any contract, agreement or other form of arrangement for, or relating to, the provision of legal assistance entered into, or made, by the States -

- (a) prior to the commencement of this Ordinance, or
- (b) which the Administrator, following consultation with the Committee, determines as such.

Establishment of Legal Aid Schemes.

2. (1) There are established for the purposes described in Part II, four Schemes to be known as -

- (a) the Transitional Legal Aid Scheme,
- (b) the Legal Aid, Advice and Assistance Scheme,
- (c) the Criminal Legal Aid Scheme, and
- (d) the Civil Legal Aid Scheme.

(2) The Schemes established under subsection (1) are referred to in this Ordinance as "**the Schemes**".

PART II
PURPOSES OF THE SCHEMES

Purpose of the Transitional Legal Aid Scheme.

3. The purpose of the Transitional Legal Aid Scheme is to enable any individual beneficiary of legal assistance under a relevant contract to continue to receive that assistance in accordance with the terms and conditions of the contract.

Purpose of the Legal Aid, Advice and Assistance Scheme.

4. The purpose of the Legal Aid, Advice and Assistance Scheme (also known as the "Green Form Scheme") is to enable an individual, who satisfies specified eligibility criteria, to obtain -

- (a) advice about the application of the laws of Guernsey and Alderney to specified circumstances which have arisen in relation to -
 - (i) that individual, or
 - (ii) such other individual as may be specified, and
- (b) in specified circumstances, assistance in order to -
 - (i) settle a claim,
 - (ii) defend criminal proceedings,
 - (iii) bring or defend civil proceedings, or

- (iv) make any specified agreement or other document that has or is intended to have legal effect,

subject to specified conditions.

Purpose of the Civil Legal Aid Scheme.

5. The purpose of the Civil Legal Aid Scheme is to enable an individual, who satisfies specified eligibility criteria, to obtain advice, assistance and representation in relation to specified civil and family proceedings, subject to specified conditions.

Purpose of the Criminal Legal Aid Scheme.

6. The purpose of the Criminal Legal Aid Scheme 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.

Limitation of Schemes to Guernsey and Alderney matters.

7. Advice, assistance or representation under the Schemes is not available in relation to -

- (a) legal proceedings before a court outside Guernsey and Alderney (other than appeal proceedings relating to any matter dealt with at first instance before a court in Guernsey or Alderney), or
- (b) any matter where -

- (i) the relevant governing, or applicable, law is a law other than the law of Guernsey or Alderney, and
- (ii) the matter is not a matter that is justiciable before a court in Guernsey or Alderney.

PART III
FINANCIAL MATTERS

Remuneration payable under the Schemes.

8. (1) The rates of remuneration which shall be paid, and the persons to whom and the circumstances and conditions in, and subject to, which payments may be made in respect of -

- (a) legal or other services reasonably and necessarily rendered,
- (b) expenses reasonably and necessarily incurred, and
- (c) disbursements reasonably and necessarily made,

for the purposes of providing legal services under or in connection with the Schemes, shall be as specified.

(2) Without prejudice to the generality of the power under subsection (1), any matter specified thereunder may make provision for, or concerning the circumstances in which payments may be made on account of -

- (a) legal, or other, services reasonably and necessarily rendered,
- (b) expenses reasonably and necessarily incurred, and
- (c) disbursements reasonably and necessarily made.

(3) Remuneration and other payments specified under this section shall be paid by the Committee from the general revenue account of the States.

Contributions payable under the Schemes.

9. (1) The amount of any contribution, the method of and time for payment of any contribution, the amount of interest payable in respect of any overdue contribution and the persons by whom, and circumstances in which, a contribution is payable under the Schemes, shall be as specified.

(2) Without prejudice to the generality of the power under subsection (1), any matter specified thereunder may make provision for, or concerning-

- (a) the maximum and minimum contributions payable under the Schemes, and
- (b) the payment of contributions by means of -
 - (i) periodical payments,

- (ii) a capital sum, or
- (iii) such other method as may be specified.

Reimbursement to Administrator of payments made under Schemes.

10. (1) A payment which has been made under any of the Schemes established under Part I -

- (a) in error,
- (b) in respect of a legally assisted person who is no longer eligible under a Scheme,
- (c) as a result of any misrepresentation made to the Administrator,
- (d) for the purpose of enabling a person to recover or preserve any property (and which has enabled the property to be recovered or preserved), or
- (e) in such other circumstances as may be specified,

shall be reimbursed, together with such interest as may be specified, to the Administrator by the persons referred to in subsection (2), who shall be jointly and severally liable.

(2) The persons for the purpose of subsection (1) are -

- (a) subject to subsection (3), the person to whom the

payment has been made, and

- (b) the legally assisted person who has received advice, assistance or representation under a Scheme.

(3) Subsection (2)(a) shall not apply to a person to whom a payment has been made in circumstance where subsection (1)(c) has effect, except where the person to whom the payment has been made -

- (a) knew, or ought reasonably in the circumstances to have known, at the time of payment, that a misrepresentation had been made to the Administrator, and
- (b) has failed to notify the Administrator that a misrepresentation has, or appears to have, been made.

(4) Any sum paid to or received or recovered by the Administrator under this section shall be paid into the general revenue account of the States.

Payment to Administrator of legal costs recovered by, or on behalf of, legally assisted person.

11. (1) Any sum paid to or received or recovered by, or on behalf of, a legally assisted person under -

- (a) any order for legal costs made in favour of the legally assisted person, or

- (b) any agreement pursuant to which costs are payable to, or for the benefit of -
 - (i) the legally assisted person, or
 - (ii) any person acting, or who has acted, on behalf of the legally assisted person,

shall be paid to the Administrator by the legally assisted person, or by any person to whom any such sum has been paid.

(2) Subject to subsection (3), any sum payable to the Administrator under subsection (1) may be recovered by the Administrator from -

- (a) the legally assisted person, or
- (b) any person to whom any such sum has been paid,

as a civil debt in accordance with section 7 of the Law of 2003.

(3) The amount of any liability of any person under subsection (1) shall not exceed the amount of any payment which -

- (a) has been made under any of the Schemes for the benefit of the legally assisted person concerned, and
- (b) has not been paid to or received or recovered by the Administrator further to any other provision of or under the Law of 2003 or otherwise.

(4) Any sum paid to or received or recovered by the Administrator under this section shall be paid into the general revenue account of the States.

(5) For the avoidance of any doubt, the courts of the Bailiwick shall have jurisdiction over any dispute or claim arising in connection with any sum recoverable by the Administrator under the Law of 2003; provided that this subsection shall not prevent the Administrator from commencing proceedings in a court having jurisdiction outside the Bailiwick -

(a) for recovery of any such sum, or

(b) for enforcement of a judgment obtained from any court, whether within or outside the Bailiwick.

Indemnity for costs of legally assisted person to enure for benefit of Administrator.

12. (1) The right of any legally assisted person to be indemnified against any costs or expenses incurred in connection with any proceedings shall enure for the benefit of the Administrator.

(2) Where the Administrator is entitled to the benefit of any indemnity under subsection (1), she may enforce any right to be indemnified in the same manner as the legally assisted person could enforce her right under the indemnity.

(3) The amount of any sum, which may be recovered by the Administrator under an indemnity under this section, shall not exceed the amount of any payment which –

- (a) has been made under any of the Schemes for the benefit of the legally assisted person concerned, and
- (b) has not been paid to or received or recovered by the Administrator further to any other provision of or under the Law of 2003, or otherwise.

(4) Any sum paid to or received or recovered by the Administrator under this section shall be paid into the general revenue account of the States.

Costs in legal proceedings involving a legally assisted party.

13. (1) In any legal proceedings involving a legally assisted party, a court may make an order requiring such costs as the court thinks fit to be paid by any party to the proceedings to the Administrator; provided that the amount of any such costs does not exceed the amount that –

- (a) has been paid or is payable under any of the Schemes in connection with the proceedings, and
- (b) has not been paid to or received or recovered by the Administrator further to any other provision of or under the Law of 2003 or otherwise.

(2) Any sum paid to or received or recovered by the

Administrator under this section shall be paid into the general revenue account of the States.

PART IV

OFFICE OF COMMISSIONER AND REVIEW OF ADMINISTRATOR'S DECISIONS

Establishment of the Office of the Commissioner.

14. (1) There is established an office to be known as the office of the Legal Aid Commissioner (referred to in this Law as "**the Office of the Commissioner**").

(2) The Office of the Commissioner is a body corporate with perpetual succession.

(3) The holder of the Office of the Commissioner shall discharge the functions of that office and is referred to in this Law as "**the Commissioner**".

(4) The function of the Commissioner shall be to review decisions taken by the Administrator in accordance with the provisions of this Ordinance.

Independence of the Office of the Commissioner.

15. (1) The Office of the Commissioner is independent of the States and of the States of Alderney and of any committee of the same.

(2) Except to the extent provided otherwise under this Ordinance or any other enactment, the Office of the Commissioner -

(a) is not subject to any rule of law relating to, and

- (b) does not have any right or privilege vested in, or enjoyed by,

a committee of the States or of the States of Alderney.

Appointment.

16. (1) The States shall, on the nomination of the Committee, appoint the Commissioner.

(2) The terms and conditions of the Commissioner's appointment shall be such as may from time to time be agreed between the Committee and the Commissioner, provided that none of those terms and conditions shall be -

- (a) inconsistent with any provision of this Ordinance, or
 - (b) construed so as to create a contract of employment or agency between -
 - (i) the States, or
 - (ii) any committee,
- and the Commissioner.

Tenure of office.

17. (1) Subject to the provisions of this section, the Commissioner shall hold office for such term not exceeding five years as may be agreed between the Committee and the Commissioner at the time of appointment.

(2) The Commissioner may only be relieved from office by the Committee before the expiration of the agreed term -

(a) pursuant to a Resolution of the States requiring the Committee so to do, or

(b) on receipt of a written request made by the Commissioner.

(3) When the Commissioner ceases to hold office by reason of the expiration of the agreed term he shall be eligible for reappointment.

Confidentiality of information.

18. (1) The Commissioner shall not disclose or cause or permit the disclosure of any document or information which relates to the business or affairs of any person and which is acquired by the Commissioner in the course of performing the functions of the Office of Commissioner, except -

(a) with the consent of the person to whom the document or information relates and (if different) the person from whom it was acquired, or

(b) to the extent that the disclosure is necessary -

(i) to enable the Commissioner to perform those functions,

- (ii) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings, or
- (iii) to comply with an order of a court.

(2) A person who, without reasonable excuse, discloses or causes or permits the disclosure of any document or information in contravention of subsection (1) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both.

Administrator's review of decisions.

19. (1) A person aggrieved by a decision of the Administrator -
- (a) to refuse an application for legal assistance under any of the Schemes (other than a decision to refuse an application for a reason relating to an applicant's failure to meet specified financial criteria),
 - (b) to grant an application for legal assistance subject to any condition or limitation (other than a condition relating to the payment of any contribution),
 - (c) to vary any condition or limitation to which any grant of entitlement to legal assistance is subject (other than a decision to vary a condition relating to the payment of any contribution),

- (d) to revoke a grant of entitlement to legal assistance (other than a decision to revoke a grant for a reason relating to an applicant's failure to meet specified financial criteria), or
- (e) of such other type as may be specified,

may require the Administrator to review the decision.

- (2) A review under this section must be instituted -
 - (a) either -
 - (i) within a period of 14 days immediately following the date of the notice of the Administrator's decision, or
 - (ii) within such longer period as the Administrator may allow, where the Administrator is satisfied that -
 - (A) it was not reasonably practicable for the review to be instituted within that period of 14 days, and
 - (B) it is fair in all the circumstances, and
 - (b) by written notice served on the Administrator stating

the grounds and material facts on which the person making the review relies.

(3) Following a review under this section the Administrator shall-

(a) set the decision aside and substitute the decision with another decision, or

(b) confirm the decision, in whole or in part.

Commissioner's review of decisions of Administrator under section 19(3).

20. (1) A person aggrieved by a decision of the Administrator under section 19(3) may apply to the Commissioner to review the decision.

(2) The grounds of an application to review under this section are that -

(a) the decision was ultra vires or there was some other error of law,

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An application to review under this section shall be instituted-

(a) either -

(i) within a period of 28 days immediately following the date of the notice of the Administrator's decision, or

(ii) within such longer period as the Commissioner may allow, where the Commissioner is satisfied that -

(A) it was not reasonably practicable for the application to be instituted within that period of 28 days, and

(B) it is fair in all the circumstances, and

(b) by written notice served on the Administrator stating the grounds and material facts on which the person making the application relies.

(4) Following a review under this section the Commissioner may-

(a) set the decision of the Administrator aside and, if the Commissioner considers it appropriate to do so, remit

the matter to the Administrator with such directions as the Commissioner thinks fit, or

(b) confirm the decision, in whole or in part.

(5) On a review under this section against or relating to a decision described in section 19(1)(b) or (c) the Commissioner may, upon the application of the applicant, and on such terms as the Commissioner thinks just, suspend or modify the operation of the condition or limitation in question, or the variation thereof, pending the determination of the review.

(6) An appeal from a decision of the Commissioner made under this Ordinance shall lie to the Royal Court on a question of law.

PART V GENERAL PROVISIONS

Power to issue guidance.

21. (1) Subject to subsection (2), the Administrator may from time to time issue guidance concerning the administration of a Scheme.

(2) Where guidance under subsection (1) relating to -

- (a) the eligibility of an individual,
- (b) the scope of the advice, assistance or representation that may be available to an individual,
- (c) rates of remuneration, or

- (d) rates of contributions,

under a Scheme, conflicts with regulations or rules of the Committee relating to any of those matters, the regulations or rules, as the case may be, shall have precedence.

- (3) Guidance under subsection (1) -

- (a) may provide for the circumstances in and conditions subject to which payments under, or in connection with, a Scheme may be made, and
- (b) may include provisions establishing such reasonable system of assessment and taxation of claims for payment as the Administrator may determine.

(4) Failure to comply with guidance issued by the Administrator shall entitle the Administrator to take such reasonable steps as she thinks fit including, without limitation -

- (a) making a decision of a type referred to in section 19(1),
- (b) refusing to make payment of any sum of money claimed under a Scheme, and
- (c) making payment of part only of any sum of money claimed under a Scheme.

Disclosure of documents and information to Administrator.

22. (1) This section applies where the Administrator gives written notice that she requires to have sight of, or access to, any document or information specified in the notice for the purposes of carrying out her functions under the Law of 2003.

(2) Where this section applies -

- (a) any prohibition or restriction on the disclosure of any document or information,
- (b) any duty of confidentiality, and
- (c) any obligation not to disclose any document or information,

is not infringed or breached by a relevant person, where the disclosure is made in accordance with a requirement under a notice given under subsection (1).

(3) For the purposes of this section -

- (a) a prohibition, restriction, duty and obligation means a prohibition, restriction, duty and obligation of any type and whether arising under statute or otherwise,
- (b) a notice under subsection (1) may, without limitation, specify -

- (i) individual documents and/or specific information, and/or
- (ii) classes or descriptions of document and/or information, and
- (c) a "**relevant person**" means -
 - (i) an Advocate, and
 - (ii) such other person or body as the Administrator shall determine.

Disclosure of documents and information to Advocate.

23. (1) This section applies where a legally assisted person has instructed an Advocate ("**Advocate A**") in relation to a matter in the place of another Advocate, who has previously been instructed by that assisted person, in relation to the same or a similar matter.

- (2) Where this section applies -
 - (a) the Administrator may disclose to Advocate A such documents and information relating to -
 - (i) the legally assisted person, and
 - (ii) the matter or matters referred to in subsection (1),

as the Administrator thinks fit for the purposes set out in subsection (3), and

(b) section 5 (confidentiality) of the Law of 2003 shall not apply to the disclosure.

(3) The purposes are -

(a) to ensure that no unreasonable or unnecessary cost or expenditure is borne by a Scheme,

(b) to inform Advocate A of anything that may be relevant for the purposes of the efficient and fair determination or disposal of any matter, and

(c) to ensure that the interests of justice are satisfied.

Exclusion of liability.

24. (1) Subject to subsection (3), no person within subsection (2) is to be -

(a) liable in damages, or

(b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done in the discharge or purported discharge of her functions, or functions delegated to her, under the Law of 2003, unless the thing was done or omitted to be done in bad faith.

- (2) The persons within this subsection are -
- (a) the Administrator,
 - (b) any person -
 - (i) to whom the Administrator has, under paragraph 6 of the First Schedule to the Law of 2003, delegated the carrying out of any function, or
 - (ii) appointed as Deputy Administrator under paragraph 7 of that Schedule, and
 - (c) the Commissioner.

(3) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^d.

Interpretation.

25. (1) In this Ordinance, unless the context requires otherwise –

"the Administrator" means the holder of the Office of the Administrator,

^d Ordres en Conseil Vol. XL p. 396 as amended by Order in Council No. 1 of 2005 and G.S.I. No. 27 of 2006.

"**guidance**" includes codes of practice, memoranda, circulars, notes and information sheets,

"**the Law of 2003**" means the Legal Aid (Bailiwick of Guernsey) Law, 2003,

"**person**" includes any body or authority,

"**relevant contract**": see section 1(3),

"**specified**" means specified by rules made by the Committee,

"**the Schemes**": see section 2(2),

"**States**" means the States of Guernsey,

and other words or expressions which are defined in the Law of 2003 have the same meanings as in that Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Amendment of Law of 2003.

26. (1) The Law of 2003 is amended as follows.

(2) In section 24, immediately after the words "the amount" insert "(together with interest thereon, calculated in accordance with such method as may

be specified by regulations, under any Ordinance made under this Law or under the provisions of a Scheme)".

(3) Immediately after section 24, insert the following section-

"Recovery or preservation of property.

24A. For the purposes of this Part and any Ordinance, order, regulations or rules made under this Law, property which is recovered or preserved includes property -

- (a) that a court has confirmed or declared is vested in a person,
- (b) to which a court has confirmed or declared that a person is entitled, and
- (c) that has been recovered or preserved further to a settlement or agreement reached without recourse to legal proceedings."

(4) In section 29(1), insert the following definitions in the appropriate places -

""**property**" means -

- (a) *immeubles* and *meubles* of any description, wherever situated, and any share, right or interest therein, and includes tangible or

intangible property and any debt or other thing in action, and

- (b) in relation to rights and interests, includes rights and interests whether vested, contingent, defeasible or future,"

""**regulations**" means regulations made by the Committee," and

""**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989.".

(5) In section 30(2) -

- (a) for the full stop substitute a comma, and
- (b) insert the following subparagraph immediately after subparagraph (ii) -

"(iii) in the case of an Ordinance, provision –

- (A) enabling the Administrator to issue guidance concerning the administration of a Scheme, and

- (B) relating to the consequences of a failure to comply with guidance.".

Accounts.

27. Provided that the Administrator complies with the policies and procedures of the States governing the maintenance and production of annual accounts, the obligations of the Administrator under paragraph 3(4) of the First Schedule to the Law of 2003 are deemed to be discharged.

Extent.

28. This Ordinance has effect in Guernsey and Alderney.

Citation.

29. This Ordinance may be cited as the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018.

Commencement.

30. This Ordinance shall come into force on the day appointed by regulations.

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