

Draft of General Scheme of Criminal Justice (Legal Aid)
Bill 2023

June 2023

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SCHEDULES 1 and 2

LONG TITLE

An Act to confer functions relating to the administration of criminal legal aid in the State on the Legal Aid Board, to provide for a statutory basis for the operation of certain schemes of legal aid, to extend the provisions of the Civil Legal Aid Act 1995 in so far as it relates to the provision of legal advice and to reform and update the procedures for granting criminal legal aid and to make related provision.

PART I

PRELIMINARY

HEAD 1

Short Title and Commencement

To provide that

(1) This Act may be cited as the Criminal Justice (Legal Aid) Act 2023

(2) This Act shall come into operation on such day as the Minister may appoint by order.

HEAD 2

Interpretation

To provide that

“application” means an application for criminal legal aid within the meaning of Head 12

“accused” in respect of an offence, means the person charged with the offence;

“the Board” means the Legal Aid Board

"criminal legal aid" means, the payment in respect of a specified person of the costs of preparing and conducting a defence before the District Court, or on indictment or in relation to the conduct of an appeal or case stated in respect of criminal proceedings to include

- (a) the provision of legal advice to the specified person*
- (b) the representation of the specified person in the proceedings*
- (c) qualifying expenses and costs related to the provision of advice and representation*
- (d) additional fees and expenses, if any, as determined in accordance with Head 30*
- (e) such other assistance as may be necessary.*

“the financial ground” means the financial circumstances of the specified person , having regard to the Statement provided under Head 13, in so far as they relate to the capacity of the specified person to pay the costs of the preparation and conduct of his or her defence, and in other proceedings in respect of which criminal legal aid may be provided .

“ the interests of justice ground” means the interests of justice within the meaning of Head 17 in so far as they relate to an application made under Head 12.

“legal aid certificate” means a certificate granted to a specified person to whom the certificate relates in respect of specified proceedings, which certifies that that person, for the preparation and conduct of his or her defence in those proceedings, or appeal or case stated or for another matter is entitled to such criminal legal aid as is specified by or under this Act and shall include a legal aid (District Court) certificate , a legal aid (trial on indictment) certificate, a legal aid (appeal) certificate , a legal aid (case stated) certificate or a legal aid (Supreme Court) certificate

“legal aid in respect of the custody of a person ” means the legal and related expenses granted in accordance with Head 27, including proceedings that are other than criminal in nature which directly relate to substantive proceedings of a criminal nature

“Minister” means the Minister for Justice

“specified person” means a person, the subject of an application made under Part II

“the prosecution”, in relation to an offence means the Director of Public Prosecutions, a person prosecuting the offence at the suit of the Director of Public Prosecutions, or a person authorised by law to prosecute the offence

“statement of financial circumstances” means the personal financial and other information contained in a statement for the purposes of Head 13

HEAD 3

Expenses in the administration of the Act

To provide that –

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of moneys provided by the Oireachtas.

HEAD 4

Advances to Board

To provide that –

(1) The Minister may, in each financial year, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine the amount or amounts, for the purposes of expenditure by the Board in the performance of its functions under this Act, which shall from time to time be advanced by the Minister to the Board, after consultation with the Board, out of moneys provided to it by the Oireachtas.

(2) Such sums as are advanced to the Board under subhead (1) shall be paid to the Fund maintained by the Board under section 29 of the Act of 1995.

HEAD 5

Payment of expenses of legal aid out of moneys provided by the Oireachtas

To provide that –

Where a legal aid certificate as provided for under this Act and as set out in Schedule 1 has been granted to a person, any fees, costs or other expenses properly incurred in preparing and conducting the defence or any other matter to which the certificate relates including the preparation and conduct of an appeal or cases stated, shall, subject to regulations prescribed under these Heads , be paid out of moneys provided by the Oireachtas .

HEAD 6

Repeal

To provide that –

The following enactments shall stand repealed upon the commencement of the relevant provisions of this Act:

The Criminal Justice (Legal Aid) Act 1962 (No. 12 of 1962)

HEAD 7

Regulations

To provide that

(1)The Minister [or the Board] [or the Minister and/or the Board as may be provided] may make regulations for carrying this Act into effect including in relation to any matter referred to in this Act as prescribed or to be specified , and notwithstanding the generality of this provision, may in particular prescribe –

- (i) Fees payable under this Act in relation to any particular case or class of proceedings including in respect of any legal aid certificate issued under this Act and legal aid granted in respect of the custody of a person within the meaning of Head 27 , or custody advice within the meaning of Head 44;*
- (ii) the scales of payment of any fees, and costs or expenses properly incurred in relevant proceedings*
- (iii) the rate of fee payable, including the daily rate of fees, and otherwise as it may relate to the number of appearances in relevant proceedings*
- (iv) the fee in respect of any representation assigned, in particular the number of solicitors or barristers assigned*
- (v) the fee in respect of the duration of a case or proceedings*
- (vi) the fee in the case of assignments where there are two or more defendants*
- (vii) the fee to apply in the case where a defendant is prosecuted in respect of more than one offence*
- (viii) the fee in relation to obtaining any preliminary advice*
- (ix) the travelling expenses of solicitors and / or barristers providing services under this Act*
- (x) the fees relating to additional discovery or costs relating to preparation of the case in relevant proceedings*
- (xi) the arrangements for recovery of fees , where applicable under the provisions of these Heads*

and the circumstances in which fees may or may not be paid , the terms and conditions under which different fees and expenses may be paid and how the rates of fees are structured in specified circumstances.

(2) Every regulation made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such house within the next subsequent 21 days on which that House has sat after the regulation is made before it, the regulation shall be annulled accordingly but without prejudice to anything previously done thereunder.

(3) Regulations under this section in relation to the payment of any fees, costs or expenses shall not be made without the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform.

(4) On the coming into operation of this section, all regulations made under the 1962 Act, as amended, or in pursuance of that Act, as amended, as have effect immediately before such coming into operation, shall remain in force unless the matter the subject of those regulations is provided for otherwise by regulations made under this Act.

HEAD 8

Rules of Court

To provide that –

Without prejudice to the power of the court to make such provision in the absence of such rules, rules of court may make provision to give further and better effect to specified provisions under this Act , including the manner and form in which

- (a) an application under Head 12 is to be made,*
- (b) information under Head 13 is to be provided*
- (c) notifications under Head 15 are communicated*
- (d) objections under these Heads are conducted*
- (e) procedures concerning applications for legal aid in respect of the custody of persons under these Heads are provided and*
- (f) to provide for any ancillary matter relating to the operation of the procedures provided for under these Heads.*

HEAD 9

Transitional

To provide that –

On the commencement of the relevant provisions of this Act , nothing in the Act shall affect in any way the validity of or conditions attaching to

- (a) any certificate of legal aid granted or aid granted under provisions heretofore in force or*
- (b) Legal aid in respect of a custody matter within the meaning of Head 27 under the Scheme known heretofore as the Custody issues scheme, or*
- (c) Any determinations made in respect of custody advice under Head 45 made before the coming into effect of that Head*

or , in respect of these matters, any application for same which is before the court or the Board before the commencement of this Act.

PART 2

APPLICATION FOR CRIMINAL LEGAL AID, FINANCIAL CIRCUMSTANCES OF APPLICANT, GRANT OF LEGAL AID BY COURT, ASSESSMENT and RECOMMENDATION BY BOARD

Chapter 1

HEAD 10

Person subject to proceedings (“specified person”)

The provisions of these Heads shall relate to a specified person who, for the purposes of these Heads shall be -

- (i) A person charged before the District Court*
- (ii) A person who appeals to the Circuit Court from a decision of the District Court in a criminal matter*
- (iii) A person returned for trial for an indictable offence*
- (iv) A person who is convicted of an offence and appeals from the conviction or the penalty*
- (v) A person who is charged with a relevant offence and a question of law arising in relevant proceedings is referred or a case is stated*
- (vi) A person who is charged with a relevant offence and an appeal is brought to the Supreme Court in relevant proceedings*
- (vii) A person the subject of another proceeding of a criminal nature.*

Chapter 2 Application for criminal legal aid

HEAD 11

Court to inform person of legal aid

To provide that

(1) A specified person , within the meaning of Head 10, shall be informed by the court that he or she may apply for criminal legal aid, and if, subject to the provisions of these Heads, criminal legal aid is granted to the person, an application in that behalf, within the meaning of Head 12 shall be made .

(2) Where a certificate has been granted under the provisions of these Heads, a trial of the matter shall not proceed in the absence of legal representation.

HEAD 12

Application for Criminal Legal Aid

To provide that –

(1) Subject to the provisions of this Act, a specified person who wishes to be granted criminal legal aid or legal aid in respect of the custody of that specified person within the meaning of Head 27 shall apply to the Court in that regard.

(2) An application for the grant of

(a) criminal legal aid or

(b) subject to subhead 27, legal aid in respect of custody of a person

shall be made in writing by the specified person or can be made in the form of an on-line or electronic application, in the manner prescribed [or specified].

(3) The specified person shall make his or her application in person or his or legal representative at the commencement of the proceedings or at another time in the proceedings having regard to the interests of justice.

(4) The form and manner of application, including the information to be contained therein regarding the duties and obligations arising under this Part, shall be prescribed by the Minister by way of regulations .

(5) A specified person, or a person on his or her behalf, who knowingly or recklessly makes a statement (orally or in writing, or through electronic means) in relation to an application under this Head that is false or misleading in any material respect, shall be guilty of an offence and shall be liable, on summary conviction, to a class B fine or imprisonment for a term not exceeding 6 months, or both.

HEAD 13

Financial circumstances of specified person

To provide that

(1) where a specified person , within the meaning of Head 10, applies to a court for criminal legal aid under Head 12, other than in respect to the custody of a person within the meaning of Head 27, the court shall require the person to complete and submit to the court a Statement of Financial Circumstances (“the Statement”)

(2)The purpose of the Statement shall be to facilitate the provision by an applicant to the court of the personal, financial and other information relevant to the application that the court may require for the purposes of determining eligibility on the financial ground .

(3) For the purposes of subsection (1) the court may, by notice in writing served on the specified person , require him or her to attend before the court and provide the court with such information as the court may require in relation to his or her financial circumstances

(4) Where a specified person fails or refuses to provide the court with information as to his or her financial circumstances, the court shall make a determination under Head 15 as to the grant of legal aid as it considers appropriate taking into account such information (if any) as is known to the court concerning these circumstances.

(5) The Court shall make a referral to the Board under Head 15 (3) where there has been a failure or refusal to provide the court with information under the provisions of this section, and the Board shall discharge its functions under Head 21 in respect to the matter .

(6) A person who knowingly or recklessly makes a statement (orally or in writing, or through electronic means) in relation to his or her, or another person's financial circumstances that is false or misleading in any material respect to a court discharging its function under subsection (2) shall be guilty of an offence and shall be liable, on summary conviction, to a class B fine or imprisonment for a term not exceeding 6 months, or both.

(7) It shall be a matter for the court to decide in relation to an application for legal aid whether or not a statement of financial circumstances should be provided by a specified person if it be the case that a statement of financial circumstances was provided previously by that person in respect of his or her prior appearance in court, or prior application to the court for legal aid.

(8) It shall be a matter for the court to decide in relation to an application for legal aid in respect of a trial on indictment, or an appeal or for case stated, whether or not a statement of financial circumstances should be provided by a specified person if it be the case that a statement of financial circumstances was provided previously by that person in respect of his or her prior appearance in court.

HEAD 14

Regulations to provide for the Statement of Financial Circumstances

To provide that –

(1) The form of the Statement of Financial Circumstances shall be prescribed by the Minister by way of regulations .

(2) Regulations under subhead (1) shall have regard to the following:

- The amount of the specified person's income*
- The aggregate value of all property (real and personal) belonging to the specified person*
- The aggregate amount of all liabilities of the specified person including any duty (moral or legal) to provide financially for members of his or her family or other persons*
- The monies owing to the specified person, and*
- Such other circumstances as the Minister, having consulted with the Board in the matter, considers appropriate.*

(3) The Minister shall, in relation to determinations in respect of the financial ground, prescribe in monetary terms a specified threshold relevant to the financial circumstances of a specified person.

(4) For the purposes of this Part, “the specified threshold” shall mean a specified amount of an applicant's disposable income and a specified amount of an applicants disposable capital .

(5) Where a Statement indicates that a specified person's disposable income or disposable capital exceeds the amount prescribed by the Minister , the provisions of Head 15 (4) shall have effect.

HEAD 15

Power of court to grant or refuse legal aid

To provide that –

(1) Having considered an application provided under Head 12, and a statement of financial circumstances provided under Head 13, other than an application for legal aid in respect to the custody of a person under 27, a District or other court shall

(a) grant criminal legal aid or

(b) refuse to grant criminal legal aid.

(2) A decision to grant legal aid shall be made

(a) where the interests of justice ground applies, as provided for under Head 17 and

(b) where the financial ground applies, within the meaning of subhead (6).

(3) A decision to grant legal aid under this Head may be made by the court subject to the condition that the financial circumstances of the applicant will be the subject of assessment by the Board, in accordance with Head 21, in which circumstances, the Court shall refer the matter to the Board for assessment.

(4) The Court shall make a referral to the Board under subhead (3) where the prescribed threshold as provided for under Head 14 is exceeded

(5) A decision to refuse the grant of legal aid shall be made only on the -

(i) interests of justice ground, as defined or

(ii) where the interests of justice ground applies, on the financial ground.

(6) A decision under this Head in respect of the financial ground shall be based on the opinion of the Court, in the light of financial circumstances of a specified person brought before it, that a specified person has or has not the capacity to pay the costs

of the preparation and conduct of his or her defence in the proceedings before that court .

(7) In making a decision to grant or refuse criminal legal aid , the court may take into account any failure on the part of the specified person (or his or her representative) to co-operate with the Court .

(8) Where the court has granted criminal legal aid , and a criminal legal aid certificate has issued under Head 18, the court shall notify the specified person, the Board and the prosecution of the grant.

(9) Where the court has refused to grant criminal legal aid, the court shall notify the specified person , the Board and the prosecution of the refusal.

(10) A notification given under subhead (8) or (9) shall give reasons in writing for the grant or refusal to grant criminal legal aid and in particular the grounds as defined on which the decision is made , and shall provide notice of the specified person's right to request a review of that decision to the court under the provisions of Head 16.

(11) The Minister may prescribe the form of a notification provided for under subhead (8) and subhead (9).

HEAD 16

Refusal of legal aid : Further provisions

To provide that –

(1) Where criminal legal aid is refused under Head 15 (5) on the financial ground, the specified person who made the relevant application under Head 10, may request the Court to review that decision .

(2) The Court , where it has been requested to review its decision under subhead (1), may

(a) refuse the request, or

(b) determine that a review is warranted in which circumstances the provisions of subhead (3) shall have effect.

(3) Where the Court makes a determination under subhead (2) (b) the court shall refer the application and statement of financial circumstances to the Board for assessment by the Board, and the provisions of Head 21 shall apply to a referral under this subhead in like manner to a referral to the Board under Head 15 (3).

(4) The Minister may prescribe the form of a referral provided for under subhead (3).

HEAD 17

Interests of justice

To provide that -

(1) In considering, for the purposes of Head 15 , whether the interests of justice apply in the grant or refusal of criminal legal aid in respect of proceedings concerning specified person within the meaning of Head 10 , the following matters shall be taken into account:

- (a) the gravity of the charge or the serious nature of the offence or whether the person has been returned for trial and if so the nature of the defence if any that may have been set up*
- (b) the consequences which a conviction on that charge might have for him or her.*
- (c) the risk of imprisonment or other penalty which may be imposed on conviction,*
- (d) the effect on the livelihood or welfare of the specified person,*
- (e) the number or volume of offences in respect of which the specified person is charged with*
- (f) The complexity of the evidence or proceedings , and*
- (g) in relation to an appeal, the nature of a conviction or other penalty which is appealed*
- (h) other exceptional circumstances*

HEAD 18

Grant of legal aid certificate

To provide that –

(1) Where a court makes a decision to grant legal aid under Head 15, it shall grant in respect of the applicant a “legal aid certificate “ for the purposes set out in Schedule 1

(2) When a court grants a certificate under subhead (1), the person who is the subject of the certificate shall be entitled to criminal legal aid in the conduct of the matters provided for in the Certificate and as described in the Schedule , and to have a solicitor, and if the court considers it appropriate, counsel assigned to him or her for that purpose in such manner as may be prescribed and as set out in the Schedule.

(3) The Minister may prescribe the form of a criminal legal aid certificate to be provided under subhead (1).

HEAD 19

Criminal legal aid certificate : further provisions relating to assignment

(1) In this section “solicitor” shall have the same meaning as “practising solicitor” as defined by section 2 of the Legal Services Regulation Act, 2015

(2) In this section “barrister” or “counsel” shall have the same meaning as “practising barrister” as defined by section 2 of the Legal Services Regulation Act, 2015

(3) A person to whom a Criminal Legal Aid (District Court) Certificate has been granted in accordance with Head 18 shall have a solicitor assigned to him or her by the Court for the preparation and conduct of his or her defence.

(4) A person to whom a Certificate is granted in accordance with Head 18 may have counsel assigned to him or her by the Court for the purpose of the preparation and conduct of his or her defence or in respect of any other matter the subject of relevant proceedings .

(5) A person may only be assigned counsel in accordance with subsection (4) where the court is satisfied that such assignment is essential in the light of the gravity of the charge or the existence of exceptional circumstances.

(6) A court may direct that additional counsel be assigned to a person to whom subhead (4) applies for the preparation and conduct of his or her case where the case appears to present exceptional difficulty, and the court is of the opinion that the case cannot be conducted adequately without the assistance of such additional counsel.

(7) Where a solicitor only has been assigned under subhead (3) to a person, the court may, at any time during the proceedings and on written application by a solicitor appearing for the defence, assign counsel to the person where it considers that the gravity of the charge or the existence of exceptional circumstances are such that it is necessary for the person to have a counsel assigned to him or her to assist in the preparation and conduct of his or her defence.

(8)A decision of a court under this Head shall be final and shall not be appealable.

(9)The Minister / the Board may prescribe the manner of assignment of a solicitor or counsel under this Head.

HEAD 20

Objection to grant of legal aid

To provide that -

- (1) the Board or the prosecution may object to the grant by the court of criminal legal aid on the financial ground and that objection shall be based on the grounds that the Board or the prosecution as the case may be believe that the financial circumstances of the specified person or his or her means are sufficient to pay the costs of the preparation and conduct of his or her defence before that court in the proceedings.*
- (2) Any objection brought under subsection (1) shall, to the extent possible, be made at the commencement of relevant proceedings when the application for criminal legal aid is made.*
- (3) The court shall take account an objection made under this Head in making a decision under Head 15.*
- (4) On hearing an objection, a Court , in granting criminal legal aid may refer the statement of financial circumstances provided under Head 13 , to the Board for assessment under the provisions of Head 21.*
- (5) Rules of court may provide for the form and manner of objection under this Head.*

Chapter 5. Referral to Board

HEAD 21

Assessment by Board and powers in relation to a referral by the court

To provide that –

- (1) The Board, where a referral is made to it under Head 15, shall conduct an assessment of the financial circumstances of a specified person, and in making such assessment shall firstly take into account the applicant's Statement of Financial Circumstances.*
- (2) The Board may, in taking into account an applicant's Statement of Financial Circumstances request the specified person or his or her representative (including a solicitor) to provide it with such information as the Board may reasonably require in the conduct of the assessment under this Head.*
- (3) In relation to an assessment under this Head, the Board may require a specified person to complete a Statement of Means within the meaning of Head 22 in addition to a Statement of Financial circumstances, and shall do so when the financial circumstances of an applicant exceeds the prescribed threshold provided for under Head 13.*
- (4) The Board, in respect of a referral made to it under Head 15, shall, notwithstanding a decision having been made by the court in the matter under that Head, provide the court with a Notification of Assessment which notification shall contain the Board's assessment as to the financial circumstances and means of a specified person.*
- (5) Where assessment by the Board indicates that the means of a specified person, assessed in accordance with this Head and Head 22, are sufficient to enable him or her to pay for the legal costs of his or her defence or other proceedings the subject of this Part, the Board shall express that opinion in the Notification of Assessment.*
- (6) Where assessment by the Board indicates that that the means of a specified person, assessed in accordance with this Head and Head 22, are sufficient to enable him or her to pay a contribution to the costs of his or her defence, the Board shall express that opinion in the Notification of Assessment.*

- (7) *Where assessment by the Board indicates that the means of a specified person, assessed in accordance with this Head and Head 22 are insufficient to enable him or her to pay for the legal costs of his or her defence or pay a contribution, the Board shall express that opinion in the Notification of Assessment .*
- (8) *Where the provisions of subhead (6) apply, the Board will in addition to the requirements of that subhead, provide in the Notification of Assessment its determination, made under Head 23, as to the contribution to be paid by the specified person.*
- (9) *Where subhead (6) and subhead (8) apply, the contribution shall be made by the specified person to the Board,*

HEAD 22

Means assessment

To provide that -

- (1) The Minister shall make Regulations providing for the assessment by the Board of the means of a specified person .*
- (2) A means assessment for the purposes of this Part is an examination and evaluation of all of the financial circumstances of a specified person including the following:*
 - (i) the amount of that person's income arising from all sources including employment, social protection payments, rent payments, repayments and dividends;*
 - (ii) the amount of that person's expenses and outgoings including rent, mortgage or loan and fine payments*
 - (iii) the number of persons if any who are dependent on that person's income*
 - (iv) the aggregate of all monies owing to the person, the dates upon which they fall due to be paid and the likelihood of their being paid, and*
 - (v) the aggregate value of the person's disposable capital or assets, if any, and*
 - (vi) such other matters relating to the income and liabilities of a person which require to be considered in order to assess fairly his or her disposable income.*
- (3) The Minister shall prescribe the form of the statement of means provided for under this Head.*

(4) A specified person shall provide such further information (in addition to information which is otherwise required under the provisions of this Act) in respect of an application for criminal legal aid, as may be required by the Board, so that an assessment may be made of the person's means in accordance with this Act to determine whether or not the applicant is eligible for criminal legal aid.

Head 23

Contribution by applicant and order of court

To provide that –

- (1) Where the Board following assessment under Heads 21 and 22 is of opinion that a specified person is in a position to contribute to the costs of legal aid, the Board shall specify the amount of contribution, and a time period within which such contribution is to be paid, calculated in accordance with regulations made under subhead (5) .*
- (2) The Board, following determination of the contribution under subhead (1) shall notify the court in the manner provided under Head 22 (8).*
- (3) The Court shall make a determination in relation to a contribution specified by the Board under subhead (1) which shall be final.*
- (4) A court order shall issue in the matter to the prescribed person where a determination is made under subhead (3) that the specified contribution should be paid in the manner and within the period specified in the order .*
- (5) To provide that the Minister shall make regulations providing for the calculation of the amounts that may be paid by way of contribution to the cost of legal aid*

HEAD 24

Contributions

To provide that –

- (1) Where the Board has conducted an assessment under Head 21 and a court has determined under Head 23 (3) that the contribution should be paid, the specified person shall be required to pay that contribution to the Board*

- (2) The Minister may prescribe the conditions pertaining to the payment of a contribution as provided for under this Head, including the steps to be taken concerning any failure or refusal to pay the contribution .*

HEAD 25

Further determination by court on recommendation of Board

To provide that

- (1) Where a court has granted legal aid subject to referral to the Board under Head 15 , that court may,*
 - (a) where*
 - (i) it receives a Notification of Assessment by the Board under Head 22 , or*
 - (ii) information is provided to the court arising from an objection of the Board or the prosecution , or*
 - (iii) the applicant or his or her representative refuses to provide information , or otherwise co-operate with the court or the Board in the manner provided under these Heads*
 - amend the terms of the legal aid certificate which was granted or to rescind a certificate or*
 - (b) make no further determination in respect of the certificate which has issued. .*
- (2) Where the Court makes a determination and court order under Head 23, the terms of the legal aid certificate which was granted shall be amended with reference to the contribution to apply under that Head.*
- (3) Where a legal aid certificate is rescinded by a decision of a court this shall not affect remuneration due for the performance of services in connection with that certificate by an assigned solicitor or counsel provided prior to the date of such decision.*

HEAD 26

Refusal of certificate (appeal and case stated)

To provide that -

- (1) *Where a person is, on being convicted of an offence, refused a legal aid (appeal) certificate, that person may apply for the certificate to the court to which an appeal from conviction lies either*
- (a) By letter (application) addressed to the registrar of that court setting out the facts of the case and the grounds of the application*
 - (b) To the court itself*

And the court shall grant the certificate if (but only if)

(i) It appears to the court from the financial circumstances of the specified person, having regard to the Statement provided under Head 13 that the means of the person are insufficient to enable him or her to pay the costs of the preparation and conduct of the appeal, and

(ii) it appears to the court that, by reason of the serious nature of the offence or of exceptional circumstances, it is essential in the interests of justice that the convicted person should have legal aid in the preparation and conduct of an appeal.

- (2) *Where, in relation to a case stated, a person is, refused a legal aid (case stated) certificate by the District Court or Circuit Court, that person may apply for the certificate to the court in which the case stated is to be heard either*

(a) By letter (application) addressed to the registrar of that court setting out the facts of the case and the grounds of the application or

(b) To the court itself

And the court shall grant the certificate if (but only if)

(i) It appears to the court from the financial circumstances of the specified person, having regard to the Statement provided under Head 13 that the means of the person are insufficient to

enable him or her to pay the costs of the preparation and conduct of the case stated , and

(ii) it appears to the court that , by reason of the serious nature of the offence with which the person is charged or of exceptional circumstances, it is essential in the interests of justice that a legal aid (case stated) certificate is granted in respect of the person

(3) Where a person is refused a legal aid (supreme court) certificate , that person may apply for the certificate to the Supreme court either

(a) By letter (application) addressed to the registrar of the Supreme Court setting out the facts of the case and the grounds of the application

(b) To the court itself

And the court shall grant the certificate if (but only if)

(i) It appears to the court from the financial circumstances of the specified person , having regard to the Statement provided under Head 13 that the means of the person are insufficient to enable him or her to pay the costs of the preparation and conduct of the matter, and

(ii) In the case of an appeal from a determination of the High Court on a case stated by a justice it appears to the court that , by reason of the serious nature of the offence or of exceptional circumstances, it appears to the Supreme Court that by reason of the serious nature of the offence with which the person is charged or of exceptional circumstances it is essential in the interests of justice that a legal aid (Supreme Court) certificate should be granted in respect of the person.

HEAD 27

Power of court to determine that legal aid is provided in respect to the custody of a person (“custody aid”)

- (1) It shall be a matter for the [High] court, in relation to an application for legal aid in respect of the matters set out at Schedule 2, (‘custody of a person’) to determine whether or not legal aid (in this Act referred to as “custody aid” be provided and such determination shall be entered in the final Court Order .*
- (2) The High Court may require a person seeking custody aid under the Head to provide a Statement of Financial Circumstances (Custody Aid) in respect of an application under subhead (1).*
- (3) Where the application is for legal aid in respect of any matter set out in Schedule 2 (“custody of a person ”) , the Court shall acknowledge the application at the commencement of the proceedings.*
- (4) The court, having regard to the payment only of the reasonable legal (and related) expenses , in determining that custody aid is granted , shall specify the level and extent of the representation afforded the person seeking custody aid.*
- (5) The Minister shall provide by way of regulations for the determination and payment of fees, , claims and the administration generally of the operation of legal aid in respect of custody of person including the form of a Statement of Financial circumstances (Custody aid).*

HEAD 28

Custody legal aid – powers of Board

To provide that –

- (1) It shall be the function of the Board to assess the legal and related expenses that shall apply in a matter the subject of a determination by the court under Head 27*
- (2) The assessment by the Board of the fees payable in relation to the relevant legal and related expenses shall, where a Statement of Financial Circumstances is provided under Head 27, have regard to that Statement.*
- (3) If it be the case that the Board forms a view that the person seeking custody aid under Head 27 has provided misleading or substantially incomplete information, the Board shall notify the court, and the court may make further orders in the matter.*

Chapter 9

HEAD 29

Expert witness and other fees.

To provide that -

- (1) The Board may authorise the payment of fees and expenses on application by a solicitor where such solicitor wishes to engage an expert or other witness to assist in matters, and authorisation shall be provided only where such authorisation is sought prior to engagement of such expert or other witness, and such authorisation may be provided only where the Board determines that such engagement is essential to the preparation and conduct of a defence or other relevant proceedings .*
- (2) The Minister may, for the purposes of this Head, prescribe the additional fees or expenses that may be payable and that are essential to the proper preparation and conduct of a defence or appeal or a case stated in respect of criminal proceedings and the conditions and good practice matters that relate to the submissions for payment of such fees and expenses and the payment by the Board of approved claims, and the procedures to be followed when engaging expert or other witnesses.*
- (3) A decision of the Board under this Head shall be appealable to a Criminal Legal Aid (Expert witnesses) Appeal Committee and regulations made under subhead (2) may provide for such appeal .*
- (4) The Criminal Legal Aid (Expert witnesses) Appeal Committee shall -*

 - (a) be established by the Board within the period of 6 months following the enactment of these provisions and*
 - (b) shall have the function of reviewing, confirming, varying or rescinding a decision made by the Board under subhead (1) .*
- (5) For the avoidance of doubt, no fees or expenses may be approved by the Board in circumstances where a criminal legal aid certificate has not been granted under this Act.*

HEAD 30

Transmission of information

To provide that -

(1) *At the request of the Board , the court shall make available to the Board –*

(a) information relating to an application or applications under this Act in such form as may be prescribed, or

(b) any document, record in either written or electronic form, including application forms, financial statements, and related documents or reports

as may be in the possession of the court, and as are deemed essential by the Board for the discharge of its functions under these Heads including the carrying out of assessments of the financial circumstances of specified persons.

(2) *It shall be lawful for the Board to provide to the court any information in its possession concerning an application for legal aid or the financial circumstances or means of a specified person. .*

(3) *Any power or authority exercised under this Head, shall only be exercised having regard to regulations , if any, that apply to the processing of data as provided under Head 35 .*

PART 3 PENALTIES AND OFFENCES

HEAD 31

Penalty for false or misleading statement.

To provide that -

(a) A person who, other than in the circumstances provided for under Head 12 (5) or Head 14 (6), -

(a) for the purpose of obtaining a criminal legal aid certificate under this Act, whether for him or herself or some other person, or

(b) in purported compliance with any provision of this Act requiring information to be provided to the Court, or the Board or prosecution

*knowingly makes a false statement or false representation either verbally or in writing or knowingly conceals any material fact or submits incomplete information shall be guilty of an offence and shall be liable on summary conviction to a **Class B fine** or to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment.*

HEAD 32

Refund of sums upon conviction

To provide that -

- (1) Upon conviction of a person of an offence under Head 31, the court by which the person is convicted may if in the circumstances of the case the court thinks fit, order the person to pay to the Board the whole or part (as the Court considers appropriate) of any sum or part of a sum paid in respect of an application for legal aid in relation to which the offence was committed.*
- (2) Any sum paid to the Minister pursuant to this section shall be paid into the (Criminal) Legal Aid fund or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance*

PART 4 Records, Data and Information

HEAD 33

Records of Board

To provide that -

(1) Subject to subsection (2), the Board shall keep a record of—

(a) referrals made to it under Head 15

(b) notifications made under Head 21, and

(c) other matters as may be prescribed in respect of functions under these Heads.

(2) Subject to such regulations (if any) which may be made under Head 36, where a record referred to in subsection (1) includes personal data or special categories of personal data, that data may be processed, in accordance with the Data Protection Regulation and the Act of 2018, by a person for the purposes of the performance of the functions of the Board under this Act.

HEAD 34

Restriction of rights and obligations under Data Protection Regulation

To provide that -

Subject to such regulations (if any) which may be made under Head 35 the rights and obligations provided for under the Data Protection regulation, as appropriate, in so far as they relate to the processing of personal data by the Board are restricted to the extent necessary and proportionate to enable the Board to perform its functions under these Heads.

HEAD 35

Regulations for purposes of data protection

To provide that –

The Board may, with the consent of the Minister, for the purposes of these Heads prescribe by regulations:

- (a) a form of consent to the processing of personal data and special categories of personal data to be completed by a data subject (specified person within the meaning of Head 10), or*
- (b) suitable and specific measures [s 36(1) of the Act of 2018] for the processing of personal data and special categories of personal data;*
- (c) where the processing involves data relating to the health of a data subject, additional measures to be taken to safeguard the processing of that data;*
- (d) the period of time during which the rights and obligations referred to in Head 34 may be restricted under that provision;*
- (e) the period of time during which personal data or special categories of personal data may be processed.*

HEAD 36

Restriction of Freedom of Information Act

To provide that -

Without prejudice to any other exemption contained in the Freedom of Information Act 2014, that Act shall not apply to a record (within the meaning of that Act) relating to the making of a Notification of Assessment under Head 21 or specifying a contribution to be paid under Head 23 or related provision, other than in so far as a record relates to the general administration of the Board .

PART 5

TRANSFER OF FUNCTIONS TO LEGAL AID BOARD AND EXPENSES

HEAD 37

Amendment to Act of 1995

To provide that the Act of 1995 is amended-

(a) in section 5, by substituting the following for subsection (1):

“(1) The principal functions of the Board shall be –

(1) to provide, within the Board’s resources and subject to the other provisions of this Act,

(i) legal aid and advice in civil cases to persons who satisfy the requirements of this Act, and(ii) a family mediation service.

(2) Where the Board considers it necessary or expedient to do so to make arrangements for the provision of

(i) family mediation services on its behalf by the engagement of persons appointed by it for that purpose

(ii) training in family mediation, either by itself or by persons appointed by it for that purpose

(3) the performance of the functions conferred on the Board by the Criminal Justice (Legal Aid) Act 2023.

and

(b) in section 7 by inserting “and in relation to the functions conferred on the Board by the Criminal Justice (Legal Aid) Act 2023” after “ legal aid and advice”.

Head 38

Functions of Board: criminal legal aid

To provide that the general functions of the Board in so far as they concern criminal legal aid shall be –

- (a) The administration of criminal legal aid, custody aid, custody advice and aid relating to proceeds of crime in accordance with the provisions of these Heads,*
- (b) The efficient management of the procedures set out in these Heads relating to financial assessment and eligibility for legal aid,*
- (c) the control of expenditure and the validity and appropriateness of payments made in respect of the matters set out at paragraph (a), and*
- (d) the establishment of appropriate governance procedures concerning the application of the provisions of these Heads and any regulations, as may be made, in so far as they relate to the payment of legal aid and contributions paid to the Board under these Heads.*

PART 6 CRIMINAL LEGAL AID OVERSIGHT COMMITTEE

Criminal Legal Aid Oversight Committee

HEAD 39

To provide for -

(1) The establishment of a body which shall be known as the Criminal Legal Aid Oversight Committee to perform the functions assigned to it under this Head

(2) The functions of the Committee shall be

(a) to oversee and advise the Minister on the administration and operation of the Criminal Legal Aid Scheme, Custody aid and Custody advice and relevant regulatory arrangements;

(b) to monitor the implementation of the Criminal Justice (Legal Aid) Act 2022;

(c) to advise and assist the Minister in relation to best practice including with reference to international best practice in the administration and operation of criminal legal aid and

(d) to ensure that criminal legal aid processes and procedures have regard to any recommendations arising under relevant audit arrangements

(e) to advise on and make recommendations regarding the development of technological and automation improvements the criminal legal aid system requires..

(f) to ensure that a cross-agency basis for collaboration is in place, with regard to the role of relevant stakeholders in the criminal legal aid process.

(3) The provisions of subhead (2) are without prejudice to any provision concerning the exercise by the Board of its statutory functions.

(4) The following may be, or may be represented as, members of the Committee established under this Head

-

- The Minister, or an official of the minister who shall be chairperson of the Committee*
- the Legal Aid Board*
- The Chief State Solicitor*
- The Attorney General*
- The Director of Public prosecutions*
- The Garda Síochána*

- *The Law Society of Ireland*
- *The Bar Council of Ireland*
- *The Courts Service*

PART VII

ADMINISTRATION OF CRIMINAL LEGAL AID SCHEME

Head 40

Solicitors providing services under the Act

To provide that

- (1) *In so far as the assignment of a solicitor is concerned and provided for under the terms of a legal aid certificate issued under this Act, or in relation to any matter concerning the custody of a person, such solicitor shall*

 - (a) *be a qualified solicitor within the meaning of the Legal Services Regulatory Act 2015 (in this section referred to as the Act of 2015)*
 - (b) *be a solicitor whose name has been included on the roll of solicitors within the meaning of the Act or 2015*
 - (c) *be a solicitor who holds a current practising certificate.*
 - (d) *comply with the terms and conditions for indemnity insurance as provided for under the Act of 2015 and the Solicitors Acts.*

- (2) *It will be a condition of assignment of a solicitor in relevant proceedings under this Act to notify the Courts Service of his or her willingness to act for persons to whom certificates for legal aid are granted and a solicitor shall provide the following information to the Courts Service in that regard*

 - (a) *name of solicitor*
 - (b) *Business address*
 - (c) *Contact details*
 - (d) *Evidence of the matters set out in subhead (1)*
 - (e) *Whether a sole practitioner, or member of a firm of solicitors and, if it be the case, name, address and contact details of that firm.*

- (3) *The Courts Service shall maintain, and publish each year, a list of solicitors who notified it of their willingness to act for persons to whom certificates for legal aid are granted.*

Counsel providing services under the Act

(1) In so far as the services of counsel are concerned and provided for under the terms of a legal aid certificate issued under this Act, or in relation to any matter concerning the custody of a person, such counsel shall

(a) be a qualified barrister within the meaning of the Legal Services Regulatory Act 2015 (in this section referred to as the Act of 2015)

(b) be included on the roll of practising barristers established and maintained by the Legal Services Regulatory Authority under part 9 of the Act of 2015, and

(c) comply with the terms and conditions for indemnity insurance as provided for under the Act of 2015.

(4) It will be a condition of assignment of a counsel in relevant proceedings under this Act to notify the Courts Service of his or her willingness to act for persons to whom certificates for legal aid are granted and a counsel shall provide the following information to the Courts Service in that regard

(a) name of counsel

(b) Business address

(c)Contact details

(d)Evidence of the matters set out in subhead (1)

(3) The Courts Service shall maintain, and publish each year, a list of counsels who notified it of their willingness to act for persons to whom certificates for legal aid are granted.

HEAD 42

Maintenance of records by Court

To provide that –

(1) The Registrar of the Supreme Court, the registrar of the Court of Appeal, the Registrar of the High Court managing the Central Office of the High Court, the Registrar of the Central Criminal Court, each County Registrar and each District Court clerk shall keep a register of all cases in which application is made to the court of which he or she is an officer for a certificate for criminal legal aid under the terms of these Heads and shall record therein in respect of each case

- The date of application*
- The name of the person making the application*
- The charge or charges involved*
- The nature of the proceedings*
- If the application is granted the names of the solicitor and counsel (if any) assigned*

(2) Records maintained under subhead (1) shall be made available by the registrar or clerk concerned to the Board, on request made by the Board .

HEAD 43

Time limits for submission of payment claims

To provide that

- (1) Claims for payment submitted by solicitors (or counsels) providing services under these Heads shall be submitted no more than 6 months from the date on which the proceedings in respect of which a legal aid certificate was issued were concluded.*
- (2) Claims referred to under subhead (1) include claims relating to certificates issued under Head 18.*

HEAD 44

Payment claims and tax compliance

To provide that -

(1) A solicitor or counsel assigned under a legal aid certificate and who makes a claim for payment under the terms of regulations or other guidance made under the terms of these Heads, must

*(a) have complied with the requirements of Heads 40 or 41 as the case may be
and*

(b) must have furnished to the Legal Aid Board the documents specified in subsection (2).

(2) The documents referred to in subsection (1) are—

(a) a tax clearance certificate issued to the person not more than 18 months before the date of the recommendation, and

(b) a statutory declaration made by the person not more than 3 months before that date to the effect that, at the time of the making of the declaration, the person is, to the best of his or her knowledge and belief, in compliance with the obligations specified in subsection (1) of section 25 and that nothing in subsection (2) of that section prevents the issue to him or her of a tax clearance certificate.”

(3) The Minister may make regulations to give effect to the provisions of this Head, including the manner in and frequency with which documents under subhead (2) are to be provided.

PART VIII ADVICE IN GARDA CUSTODY

HEAD 45

Legal advice provided to person in Garda Custody (Custody advice)

To provide that:

- (1) The provisions of the Head relate to the scheme known heretofore as the Garda Station Legal Advice Scheme or the Garda Station Legal Advice Revised Scheme which under these Heads shall be known as 'Custody Advice'.*
- (2) The Board shall administer payments in respect of the provision of custody advice to persons in Garda custody ('detained person'), in respect of -
 - a. Consultation, including phone consultations, in custody*
 - b. Attendance at Garda interviews of a suspect or an identification parade, and*
 - c. solicitors in respect of Extension Hearings held in the District Court*where that person's financial circumstances or means are insufficient to enable him or her to pay for their own legal advice in Garda custody .*
- (3) Custody advice provided under this Head shall be subject to an application, or declaration as prescribed under subhead (4) by the detained person and the completion of a statement of financial circumstances (custody advice) .*
- (4) Regulations under this Head may provide for
 - (a) Applications for custody advice and provision of prescribed information by a detained person*
 - (b) Information to be provided for the purposes of a statement of financial circumstances*
 - (c) the calculation of a detained person's means to establish eligibility under the terms of this Head*
 - (d) a specified financial threshold to determine eligibility of a detained person under the terms of this Head*
 - (e) the fees payable under this Head*
 - (f) the form of application to be used under this Head*
 - (g) different rates of fee to apply under different enactments which provide for detention periods, and*
 - (h) other terms and conditions**
- (5) Where a person is not in receipt of Social assistance or assistance payments or where a person's total income exceeds the specified threshold, the person will not be entitled to custody advice within the meaning of this Head.*

PART IX CRIMINAL ASSETS BUREAU AND LEGAL REPRESENTATION

HEAD 46

Representation in matters concerning proceeds of crime and other matters.

To provide that –

- (1) The provisions of the scheme known as the Criminal Assets Bureau Ad Hoc Legal Aid Scheme shall, as heretofore before the enactment of these provisions, continue to apply, and a person, subject to the provisions of that Scheme shall be entitled to legal aid for the purposes of representation where it is the case that the Criminal Assets Bureau, or any person on its behalf, is a respondent or defendant in proceedings.*
- (2) The Scheme referred to in subhead (1) shall, on the enactment of these provisions, be known as the Criminal Assets Bureau Legal Aid Scheme.*
- (3) The Minister may make regulations for the bringing into effect the provision of this Head.*

HEAD 47

Amendment of section 26 (3A) of the Act of 1995.

To provide that :

(a) Section 26 (3A) of the Act of 1995, inserted by the Civil Law (Miscellaneous Provisions) Act 2008 is substituted by the following

“3A Legal advice under this subsection may be provided to a victim of the following offences at any time before, subsequent to , or whether or not a complaint or a decision to prosecute in the matter is made -

- (a) the offence of rape under the common law*
- (b) the offence of rape under section 2 of the Criminal Law (Rape) Act 1981*
- (c) the offence of aggravated sexual assault under section 3 of the Criminal Law (Rape) (Amendment) Act 1990*
- (d) the offence of rape under section 4 of the Criminal Law (Rape) (Amendment) Act 1990*
- (e) an offence under section 6 (inserted by section 2 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 of the Criminal Law (Sexual Offences) Act 1993*
- (f) an offence under the Criminal Law (Sexual Offences) Act 2006*
- (g) an offence of incest under section 1 or 2 of the Punishment of Incest Act 1908*
- (h) the offence of sexual assault under section 2 of the Criminal Law (Rape) (Amendment) Act 1990,*
- (i) the offences created by sections 3 to 8 of the Criminal Law (Sexual Offence) Act 2017 ,*
- (j) section 18 of the Criminal Law (Sexual Offence) Act 2017 ,*
- (k) sections 21 and 22 of the Criminal Law (Sexual Offence) Act 2017 ,*

(b). Section 26 of the Act of 1995, as amended, is amended by the insertion of the following subsection

3B. Nothing in this Act shall operate in such a manner as to prevent the Board providing advice

(a) where the victim is a child, to a parent or guardian or an adult relative of that child [including a suitable adult within the meaning of the Sexual Offences Act 2001] or

(b) where the victim is a person (with a mental illness or intellectual disability) that lacks capacity within the meaning of section 3 of the Assisted Decision Making (Capacity) Act 2015 or is a relevant person for the purposes of the Act of 2015, to a decision making assistant or co-decision maker within the meaning of that Act in respect of the matters set out in subsection (3) that the Board would otherwise provide under this Act to a person.

(c) advice under this section shall not be provided to a person who is under suspicion or investigation in any respect for committing the offence or a related offence against the victim

SCHEDULE 1

The provisions of the Heads relate the following certificates granted by the relevant court , including a court before which the person is to be or is being tried, or the court to which an appeal or case stated lies and the assignment of solicitor of counsel as provided under these Heads .

I. a Legal Aid (District Court) Certificate where application is made by a person charged before the District Court

II. a Criminal Legal Aid (District Court) (Counsel) Certificate where application is made by a person charged before the District Court

III. A Criminal Legal Aid (Circuit Court (Counsel) Appeal) Certificate for the preparation and conduct of an appeal to the Circuit Court

IV. a Criminal Legal Aid (trial on indictment) Certificate where a person is returned for trial for an indictable offence

V. a Criminal Legal Aid (Appeal) Certificate, in the event of appeal against conviction or the penalty (if any) imposed on conviction

VI. a Criminal Legal Aid (Case Stated) certificate where the justice or judge (as the case may be) of the court before which the charge or appeal (as the case may be) is heard refers a question of law arising in the proceedings to the High Court or Supreme Court (as the case may be) by way of case stated or the justice states a case in relation to the proceedings for the opinion of the High Court,

VII. a Criminal Legal Aid (Supreme Court) Certificate where an appeal is brought to the Supreme Court from a determination of the Court of Criminal Appeal in relation to the offence or the penalty (if any) imposed in respect thereof or from a determination of the High Court on a case stated by a justice in relation to the proceedings in the District Court in regard to the offence or in relation to a question of law arising in those proceedings

VIII. a Criminal Legal Aid (Case Stated Appeal) Certificate where a person appeals to the Court of Appeal

IX. a Criminal Legal aid (case stated) certificate where application is made for opinion of the Court of Appeal

X. a Criminal Legal Aid (Supreme Court) Certificate where a person appeals to the Supreme Court (by CA or SC)

XI. a Criminal Legal Aid (Appeal) Certificate, where application as relevant is made from a decision of any criminal court.

Schedule 2

- *Habeas Corpus (Article 40.4.2) Applications .*
- *Supreme Court Bail Motions.*
- *Such Judicial Reviews as consist of or include Certiorari, Mandamus or Prohibition and concerning criminal matters or matters where the liberty of the applicant is at issue*
- .
- *Applications under Section 50 of the Extradition Act 1965*

- *Extradition Applications and European Arrest Warrant Applications (including Bail Applications directly related to these cases).*
- *High Court Bail Motions related to criminal matters).*