



Isle of Man

Ellan Vannin

AT7 OF 2012

LEGAL AID (AMENDMENT) ACT 2012



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**Isle of Man***Ellan Vannin*

LEGAL AID (AMENDMENT) ACT 2012

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AN ACT to amend further the Legal Aid Act 1986; to make a minor amendment to the Advocates Act 1976; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Legal Aid (Amendment) Act 2012.

2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Treasury may by order appoint and different days may be appointed for different purposes of this Act.
- (2) An order under subsection (1) may make such transitional and saving provisions as the Treasury considers necessary or expedient.

PART 2 – AMENDMENTS TO THE LEGAL AID ACT 1986

3 Amendment of the Legal Aid Act 1986

The *Legal Aid Act 1986* is amended as follows.

4 Section 1 amended

After section 1(2) add —

- “(3) Subject to the provisions of this Act, legal aid is also available under this Part in relation to mediation whenever it is available in connection with proceedings.
- (4) Where legal aid is given for mediation it is not to be available in connection with proceedings in relation to the same matter during the currency of the mediation process.”.

5 Section 2 amended

- (1) For the marginal note to section 2 substitute —

“2 Extent of, and eligibility for, legal aid”.

- (2) For section 2(4) substitute —

- “(4) A person must not be given legal aid in connection with any proceedings —
 - (a) if the person fails to show reasonable grounds for taking, defending or being party to the proceedings;
 - (b) if it appears unreasonable that the person should receive it in the particular circumstances; or
 - (c) if the person fails to meet the financial conditions described in section 3(1).”.

6 Section 3 amended

In section 3 —

- (a) in subsection (1)(b) for “income support or family income supplement” substitute “such social security benefits as may be prescribed”;
- (b) for subsection (2)(c) substitute —
 - “(c) regulations under section 4 shall determine the extent, if any, of the person’s financial contribution;”;
- (c) at the beginning of subsection (2)(d) insert “unless regulations provide otherwise,”.

7 Section 4 substituted

For section 4 substitute —

“4 Funding of legal aid

- (1) Regulations shall provide for the funding of legal aid to be met in whole or in part —
 - (a) by contributions made by assisted persons; or

- (b) by some or all of the expenditure being by way of loans to be repaid by assisted persons,
in accordance with the regulations.
- (2) The regulations may in particular provide —
 - (a) for the recovery of unpaid contributions or outstanding loan together with interest at the prescribed rate;
 - (b) that the amount of funding of legal aid (whether or not an amount due by way of contribution or outstanding loan), and any prescribed interest on it, is a first charge for the benefit of the Treasury on any property recovered or preserved by the assisted person (whether for the benefit of that person or another).
- (3) The regulations may make such further provision about the funding of legal aid as the Committee considers expedient.
- (4) In this section —
 - (a) “assisted person” means a person who has received legal aid;
 - (b) “property” means property of any nature and wherever situated and includes any sums recovered by virtue of an order for costs;
 - (c) a reference to property recovered or preserved in proceedings includes property recovered or preserved as a result of any compromise or settlement of the proceedings.
- (5) References in this section to the funding of legal aid are to the aggregate amount of the sums paid or payable by the Treasury in respect of the proceedings for which legal aid is granted to any advocate or to any unassisted party that are not recovered by way of an order or agreement for costs made in favour of the assisted person.”.

8 Section 7 amended

In section 7(b) for “income support or family income supplement” substitute “such social security benefits as may be prescribed”.

9 Section 10 amended

In section 10(2) for “Where a client’s financial resources exceed the prescribed figure and he is not (directly or indirectly) in receipt of income support or of family income supplement” substitute “Where a client is eligible for advice and assistance under section 7.”.

10 Section 14 amended

In section 14 —

- (a) in subsection (1) —
 - (i) at the end of paragraph (a) delete “or”;
 - (ii) at the end of paragraph (b) add —
 - “or
 - (c) for the purpose of facilitating an audit under the *Audit Act 2006.*”;
- (b) in subsection (2) for “consent” substitute “written consent”.

11 Section 16 amended

For section 16(2)(c) substitute —

- “ (c) make provision for applications for advice or assistance or legal aid under this Part including —
 - (i) by whom such an application may be made;
 - (ii) the appointment of a certifying officer, and other officers to assist the certifying officer, to determine such applications and to exercise such other functions as this Act or any regulations made under this Act may confer;
 - (iii) the terms on which a certificate providing legal aid may be granted; and
 - (iv) the information to be furnished by the person seeking or receiving advice or assistance or legal aid and by the advocate of such person;”.

12 Section 17 amended

In section 17 —

- (a) delete the definitions of “family income supplement” and “income support”;
- (b) after the definition of “legal aid certificate” insert —
 - “ “**mediation**” means any process in which 2 or more parties attempt to reach a voluntary agreement with respect to a dispute with the assistance of a person who has no power unilaterally to resolve the dispute, and includes conciliation and any similar form of dispute resolution other than litigation and arbitration;
 - “**proceedings**”, except in section 1, includes mediation.”.

13 Section 23 substituted

For section 23 substitute —

“23 Legal Aid Committee

- (1) There shall continue to be established a Legal Aid Committee consisting of neither less than 5 nor more than 7 members appointed by the Appointments Commission.
- (2) Not more than 3 lawyers may be appointed as members.
- (3) The members shall be appointed for a term not exceeding 3 years and no member may serve for more than 2 consecutive terms.
- (4) The Appointments Commission must appoint one of the members to act as chairman and one to act as vice chairman.
- (5) At any sitting of the Committee —
 - (a) the chairman or vice chairman shall preside;
 - (b) at least 2 other members shall be present; and
 - (c) a majority of the members present shall not be lawyers.
- (6) The functions of the Committee are —
 - (a) to determine the general policy with respect to legal aid;
 - (b) to oversee the administration of legal aid and to adjudicate on any complaints (other than matters within the jurisdiction of the tribunal established under section 23A) about any officer appointed under regulations made under section 16(2)(c)(ii) as to the exercise of any of the officer’s functions;
 - (c) to make regulations and schemes under this Act.
- (7) In this section “lawyer” means a person qualified to practise law in any part of the British Islands.”

14 Section 23A inserted

After section 23 insert —

“23A Legal Aid Appeals Tribunal

- (1) The Legal Aid Appeals Tribunal is established.
- (2) The tribunal is a Part 2 tribunal within the meaning of the *Tribunals Act 2006*.
- (3) The tribunal consists of a chairman and 2 members drawn from a panel referred to in section 2(1)(b) of that Act.

- (4) Section 4 of that Act is to determine the constitution of the tribunal save no person may hold office for more than 2 consecutive terms.
- (5) The tribunal has such jurisdiction as may be prescribed.”.

15 Section 24 substituted

For section 24 substitute —

“24 Regulations: general

- (1) Regulations under this Act may contain such supplemental, incidental, consequential or transitional arrangements as the Committee considers appropriate.
- (2) Regulations under this Act shall not have effect unless they are approved by Tynwald.”.

16 Section 27 amended

In section 27 before the definition of “the Committee” insert —

““Appointments Commission” means the body established under section 1 of *the Tribunals Act 2006*;”.

17 Section 29 amended

Before section 29(3) insert —

- (1) Until the Council of Ministers makes rules under section 8 of the *Tribunals Act 2006* regulating the practice and procedure of a Part 2 tribunal, regulations may make such provision.
- (2) When such rules as are mentioned in subsection (1) come into operation, regulations made in consequence of that subsection are to be treated as revoked.
- (2A) If an appeal has been or could be made (but has not been concluded) under regulations in operation prior to the commencement of section 23A, on and after such commencement the appeal —
 - (a) must be treated as having been made or capable of being made (as the case may be) in accordance with rules or regulations made under subsection (1), whichever are in operation; and
 - (b) if commenced, shall recommence before the tribunal.”.

18 Schedule 3A amended

In paragraph 1(8) of Schedule 3A for “income support or family income supplement (as defined in section 17)” substitute “such social security benefits as may be prescribed”.

PART 3 – AMENDMENTS TO OTHER ENACTMENTS**19 Consequential amendment**

At the end of Part 2 of Schedule 2 to the *Tribunals Act 2006* insert —

“12. The Legal Aid Appeals Tribunal established under section 23A of the *Legal Aid Act 1986*.”

20 Minor amendment

- (1) Section 18 of the *Advocates Act 1976* is amended as follows.
- (2) In subsection (3) —
 - (a) for paragraph (a) substitute —
 - “(a) discharge the advocate either conditionally or absolutely;
 - (aa) reprimand the advocate;”;
 - (b) for “paragraph (a) or (b) above” substitute “paragraph (a), (aa) or (b)”.
- (3) In subsection (3A) for “subsection (3)(a)” substitute “subsection (3)(aa)”.