



Isle of Man

Ellan Vannin

LEGAL AID (AMENDMENT) BILL 2012

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Explanatory Memorandum

1. This Bill, which is promoted by the Treasury, makes amendments to the Legal Aid Act 1986 as well as making small changes to 2 other enactments.
2. *Part 1* of the Bill provides for the short title and commencement only (*clauses 1 and 2*).
3. *Part 2* amends the Legal Aid Act 1986 and *clause 3* introduces the amendments. *Clause 4* amends section 1 so as to provide for legal aid in relation to mediation, and that where it is so given, it is unavailable for proceedings during the currency of the mediation.
4. *Clause 5* makes changes to section 2 for reasons of clarification.
5. *Clause 6* makes legal aid available to persons in receipt of such social security benefits as may be prescribed instead of those in receipt of income support or family income supplement. A similar change is effected in respect of advice and assistance by *clauses 8 and 9* and *clause 18* makes a similar change to Schedule 3A in relation to means and contribution orders. The changes in subsection (2)(c) and (d) of *clause 6* are consequential on the changes to section 4 made by *clause 7*.
6. *Clause 7* substitutes a new section 4. Instead of providing for contributions itself it enables regulations to provide for legal aid to be funded wholly or partly by contributions made by assisted persons or by virtue of legal aid being made a loan. Regulations may also provide for the recovery of unpaid contributions or outstanding loans plus interest and for any amount of legal aid funding plus interest to be a charge on any property recovered or preserved in the proceedings.
7. *Clause 10* amends section 14 so as to allow disclosure of information relating to legal aid, etc for audit purposes and where disclosure is to be allowed by the person whose case the information relates to, the consent is now to be in writing.
8. *Clause 11* amends section 16 so as to make specific provision for the appointment of a certifying officer and other officers to determine applications for advice or assistance or legal aid and to exercise such other functions as may be conferred under the Act or regulations made under the Act.
9. *Clause 12* makes changes to the definitions in section 17 consequential on other provisions in the Bill.
10. *Clause 13* replaces section 23 so as to provide for a newly-constituted Legal Aid Committee appointed by the Appointments Commission. It is to consist of 5-7

members of which no more than 3 are to be lawyers. Non-lawyers are to be in the majority at each sitting of the Committee. The members shall be appointed for a term not exceeding 3 years and no member may serve for more than 2 consecutive terms. The Committee's functions are expanded to include oversight of the administration of legal aid and to adjudicate on any complaints (other than matters within the jurisdiction of the tribunal) as to the exercise by the certifying officer (and other officers appointed under section 16(2)(c)(ii)) of any of the officer's functions.

11. *Clause 14* inserts section 23A which establishes the Legal Aid Appeals Tribunal as a Part 2 tribunal within the meaning of the Tribunals Act 2006. It is to have such jurisdiction as may be prescribed. It is intended to replace the Committee as the body responsible for legal aid appeals.
12. *Clause 15* replaces section 24 with a provision that includes power for regulations to contain supplemental, incidental, consequential or transitional arrangements. *Clause 16* inserts a definition of "Appointments Commission" in section 27. *Clause 17* inserts transitional provisions into section 29 to enable regulations to make procedural rules until rules are made under the Tribunals Act 2006. Once section 23A comes into operation existing or forthcoming appeals will be treated as being made under the new regulations or rules and if commenced will recommence before the tribunal.
13. *Part 3* amends other enactments. *Clause 19* adds the new tribunal to Part 2 of Schedule 2 to the Tribunals Act 2006 and *clause 20* amends section 18 of the Advocates Act 1976 to enable the Advocates Disciplinary Tribunal, where a complaint is proved, to discharge the advocate against whom it is made either conditionally or unconditionally in addition to existing penalties. The power to award costs against the advocate is extended to cover an advocate made subject to the new penalty but the requirement to report the findings and penalty matter to the Law Society and publish them is not.
14. It is anticipated that the provision to allow legal aid in relation to mediation prior to the commencement of proceedings will lead to a potential decrease in legal aid costs, a reduction of court time and costs and a reduction to the opponent's costs. This can only be properly quantified after a significant period of time and following an analysis on a case by case basis following the introduction of this legislation.
15. The introduction of this Bill will potentially allow for 100% recovery of legal aid expenditure. A sub-committee of Council has been formed to consider the extent, scope and mechanism of legal aid recovery, including considering whether legal aid should be provided by way of a loan. The financial impact of introducing this enabling clause cannot be truly estimated until the sub-committee report with their recommendations and conclusions. A consultation and impact assessment may be necessary with regard to the introduction of secondary legislation in this regard.
16. Funding may be required with regard to a newly-constituted Legal Aid Committee, and this will be dependent upon remuneration (if any) of the

Committee members and the frequency they are required to meet. It is anticipated that these issues will be determined within secondary legislation.

17. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001 This Bill is promoted by
18. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



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LEGAL AID (AMENDMENT) BILL 2012

1 **A BILL** to amend further the Legal Aid Act 1986; to make a minor amendment
2 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:—

3 **PART 1 – INTRODUCTORY**

4 **1 Short title**

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

6 **2 Commencement**

7 (1) This Act (apart from this section and *section 1*) comes into operation on
8 such day or days as the Treasury may by order appoint and different
9 days may be appointed for different purposes of this Act.

10 (2) An order under subsection (1) may make such transitional and saving
11 provisions as the Treasury considers necessary or expedient.

12 **PART 2 – AMENDMENTS TO THE LEGAL AID ACT 1986**

13 **3 Amendment of the Legal Aid Act 1986**

14 The *Legal Aid Act 1986*¹ is amended as follows.

15 **4 Section 1 amended**

16 After section 1(2) add —

17 “(3) Subject to the provisions of this Act, legal aid is also available
18 under this Part in relation to mediation whenever it is available in
19 connection with proceedings.

¹ c.23

- (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.

- 1 (2) The regulations may in particular provide —
- 2 (a) for the recovery of unpaid contributions or outstanding
- 3 loan together with interest at the prescribed rate;
- 4 (b) that the amount of funding of legal aid (whether or not an
- 5 amount due by way of contribution or outstanding loan),
- 6 and any prescribed interest on it, is a first charge for the
- 7 benefit of the Treasury on any property recovered or
- 8 preserved by the assisted person (whether for the benefit of
- 9 that person or another).
- 10 (3) The regulations may make such further provision about the
- 11 funding of legal aid as the Committee considers expedient.
- 12 (4) In this section —
- 13 (a) “assisted person” means a person who has received legal
- 14 aid;
- 15 (b) “property” means property of any nature and wherever
- 16 situated and includes any sums recovered by virtue of an
- 17 order for costs;
- 18 (c) a reference to property recovered or preserved in
- 19 proceedings includes property recovered or preserved as a
- 20 result of any compromise or settlement of the proceedings.
- 21 (5) References in this section to the funding of legal aid are to the
- 22 aggregate amount of the sums paid or payable by the Treasury in
- 23 respect of the proceedings for which legal aid is granted to any
- 24 advocate or to any unassisted party that are not recovered by way
- 25 of an order or agreement for costs made in favour of the assisted
- 26 person.”.

27 **8 Section 7 amended**

28 In section 7(b) for “income support or family income supplement” substitute

29 “such social security benefits as may be prescribed”.

30 **9 Section 10 amended**

31 In section 10(2) for “Where a client’s financial resources exceed the prescribed

32 figure and he is not (directly or indirectly) in receipt of income support or of

33 family income supplement” substitute “Where a client is eligible for advice and

34 assistance under *section 7*”.

35 **10 Section 14 amended**

36 In section 14 —

- 37 (a) in subsection (1) —
- 38 (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*².”;

(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 —

² c.15

1

“23 Legal Aid Committee

2

(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.

3

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5

(2) Not more than 3 lawyers may be appointed as members.

6

7

(3) The members shall be appointed for a term not exceeding 3 years and no member may serve for more than 2 consecutive terms.

8

9

(4) The Appointments Commission must appoint one of the members to act as chairman and one to act as vice chairman.

10

(5) At any sitting of the Committee —

11

(a) the chairman or vice chairman shall preside;

12

(b) at least 2 other members shall be present; and

13

(c) a majority of the members present shall not be lawyers.

14

(6) The functions of the Committee are —

15

(a) to determine the general policy with respect to legal aid;

16

(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;

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(c) to make regulations and schemes under this Act.

22

23

(7) In this section “lawyer” means a person qualified to practise law in any part of the British Islands.”.

24

25 14 Section 23A inserted

26

After section 23 insert —

27

“23A Legal Aid Appeals Tribunal

28

(1) The Legal Aid Appeals Tribunal is established.

29

(2) The tribunal is a Part 2 tribunal within the meaning of the *Tribunals Act 2006*³.

30

31

(3) The tribunal consists of a chairman and 2 members drawn from a panel referred to in section 2(1)(b) of that Act.

32

33

(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.

34

35

³ c.1

1 (5) The tribunal has such jurisdiction as may be prescribed.”

2 **15 Section 24 substituted**

3 For section 24 substitute —

4 **“24 Regulations: general**

5 (1) Regulations under this Act may contain such supplemental,
6 incidental, consequential or transitional arrangements as the
7 Committee considers appropriate.

8 (2) Regulations under this Act shall not have effect unless they are
9 approved by Tynwald.”

10 **16 Section 27 amended**

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

12 ““Appointments Commission” means the body established under *section*
13 *1 of the Tribunals Act 2006*.”

14 **17 Section 29 amended**

15 Before section 29(3) insert —

16 “(1) Until the Council of Ministers makes rules under *section 8 of the*
17 *Tribunals Act 2006* regulating the practice and procedure of a Part
18 2 tribunal, regulations may make such provision.

19 (2) When such rules as are mentioned in subsection (1) come into
20 operation, regulations made in consequence of that subsection are
21 to be treated as revoked.

22 (2A) If an appeal has been or could be made (but has not been
23 concluded) under regulations in operation prior to the
24 commencement of *section 23A*, on and after such commencement
25 the appeal —

26 (a) must be treated as having been made or capable of being
27 made (as the case may be) in accordance with rules or
28 regulations made under subsection (1), whichever are in
29 operation; and

30 (b) if commenced, shall recommence before the tribunal.”

31 **18 Schedule 3A amended**

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

1 **PART 3 – AMENDMENTS TO OTHER ENACTMENTS**

2 **19 Consequential amendment**

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

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

6 **20 Minor amendment**

7 (1) *Section 18 of the Advocates Act 1976*⁴ is amended as follows.

8 (2) In subsection (3) –

9 (a) for paragraph (a) substitute –

10 | “(a) discharge the advocate either conditionally or absolutely;

11 | (aa) reprimand the advocate;”;

12 (b) for “paragraph (a) or (b) above” substitute “paragraph (a), (aa) or
13 (b)”.

14 (3) In subsection (3A) for “subsection (3)(a)” substitute “subsection (3)(aa)”.

⁴ c.27

IN THE KEYS

LEGAL AID (AMENDMENT) BILL 2012

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

Approved by the Council of Ministers
for introduction in the House of Keys.

MR TEARE

FEBRUARY 2011