



ST. HELENA

## CHAPTER 17

# LEGAL AID AND LEGAL SERVICES ORDINANCE

### Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290) 2454; email [pa.lawofficers@legalandlands.gov.sh](mailto:pa.lawofficers@legalandlands.gov.sh)]<sup>1</sup>

Visit our [LAWS page](#) to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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<sup>1</sup> These contact details may change during 2011 or early in 2012. In case of difficulty, email [shgwebsite@sainthelena.gov.sh](mailto:shgwebsite@sainthelena.gov.sh) or telephone (+290) 2470.

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## CHAPTER 17

## LEGAL AID AND LEGAL SERVICES ORDINANCE

(Ordinance 17 of 1997, 3 of 2002 and 9 of 2007)

AN ORDINANCE TO MAKE PROVISION FOR THE GRANT OF LEGAL AID, AND FOR THE PROVIDING OF LEGAL SERVICES, BY THE PUBLIC SOLICITOR AND HIS OFFICE TO THE PUBLIC, AND FOR OTHER MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

**Commencement**

[16 January 1998]

PART I  
PRELIMINARY**Short title**

1. This Ordinance may be cited as the Legal Aid and Legal Services Ordinance.

**Commencement**

2. This Ordinance shall come into operation on such date as the Governor, by notice in the *Gazette*, may appoint, and different dates may be appointed for different sections.

**Public Solicitor**

2A.<sup>2</sup> (1) The Governor may appoint a suitably qualified person to be the Public Solicitor, to provide legal services to the public in accordance with the provisions of this Ordinance and any other written law.

(2) The Public Solicitor is a public officer but, in the performance of his duties towards clients, is not subject to the direction or control of any person or authority:

Provided that nothing in this subsection affects the jurisdiction of any Court or Tribunal.

(3) The Public Solicitor may be removed from office only:

- (a) at his or her own request, or
- (b) for inability to discharge the functions of his office (whether arising from inability of body or mind or any other cause) or for misconduct, and (in either case) with the consent of the Chief Justice.

**Interpretation**

3. In this Ordinance the expressions—

“**aided person**” means a person to whom legal aid has been or is being provided by the Public Solicitor or an assistant thereto;

“**assistant**” means a legal practitioner, clerk or other assistant employed in the office of the Public Solicitor;

“**certificate**” means a certificate confirming the grant of legal aid issued under section 8(1);

<sup>2</sup> Section 2A inserted by Ord. 9 of 2007

“**child**” means a person under the age of eighteen years;

“**guardian**”, in relation to a child means (without prejudice to the generality of such expression) such person or persons as the Public Solicitor shall consider may properly be appointed by a Court to be the next friend or guardian *ad litem* of the child;

“**legal aid**” means aid and assistance provided under Parts I and II of this Ordinance by the Public Solicitor or an assistant thereto;

“**person**” means, for the purposes of Parts I and II of this Ordinance, a natural person only;

“**person**” includes, for the purpose of Part III of this Ordinance, a corporate or unincorporated body;

“**proceedings**” means any criminal proceedings brought against the aided person, or any civil proceedings in which he is or intends to be a party, and shall include all proceedings before any statutory authority empowered to exercise appellate functions.

## PART II LEGAL AID

### Scope of legal aid

4. Legal aid shall consist of—

- (a) the provision of legal advice and assistance to persons in need thereof who request the same;
- (b) representation of persons in proceedings, including all such assistance usually required in the steps preliminary or incidental to proceedings, or in negotiating and implementing a settlement or compromise to avoid or bring an end to proceedings.

### Persons entitled to legal aid

5. Subject to the provisions of this Ordinance, legal aid shall be available to any person whose disposable income and disposable capital are within such limits as the Governor may, by regulations, from time to time prescribe.

### Application for legal aid

6. (1) Any person who, whether in his own right or in a representative capacity, wishes to be provided with legal aid shall apply therefor to the Public Solicitor.

(2) An application under subsection (1) shall be made in such form as may be prescribed and shall be signed by the applicant.

(3) If the applicant for legal aid is a child, the application may be made by his parent or guardian, but for the purposes of this Ordinance the child shall be deemed to be the applicant.

### Powers of Public Solicitor

7. Where an application is made under section 6, the Public Solicitor may in the determination thereof—

- (a) make such enquiries as he considers necessary concerning the means of the applicant (and those of his parent or guardian where the applicant is a child) and the merits of the case;
- (b) require the applicant within such period as he may specify to provide such information and documents as he may require;

- (c) take or cause to be taken such steps as he may deem appropriate in the best interests of the applicant pending determination of the application, including the obtaining of an adjournment of any proceedings.

### **Determination of applications**

**8. (1)** Subject to the provisions of the following subsections of this section, the Public Solicitor shall grant legal aid to any person entitled thereto in accordance with section 5, and shall issue a certificate to the applicant in the prescribed form confirming the grant thereof, which shall specify any contribution due from the aided person and the terms on which it must be paid.

**(2)** The Public Solicitor may refuse legal aid to any person whom he is satisfied has disposed of any income or capital for the purpose of satisfying the provisions of section 5 of this Ordinance.

**(3)** An application may also be refused where it appears to the Public Solicitor that—

- (a) only a trivial advantage can be gained by the applicant from the proceedings or other matter in respect of which legal aid is sought;
- (b) on account of the simple nature of the proceedings or other matter, legal aid is not reasonably necessary;
- (c) there is no real merit in the claim of the applicant for which legal aid or assistance is sought, or in the particular circumstances it would be unreasonable to grant the application:

Provided that an application which relates to criminal proceedings in which the applicant is a defendant shall not be refused where, in the opinion of the Public Solicitor, the applicant, if convicted, is likely to receive a custodial sentence.

**(4)** The Public Solicitor shall refuse to provide legal aid to any applicant who fails without reasonable excuse (the proof whereof shall lie with him) to comply with any request for information and documents made under section 7(b) of this Ordinance.

### **Applications by more than one party**

**9.** If, in relation to any proceedings in which a person who has made an application under this Ordinance is or proposes to be a party, any other party makes application for legal aid the provisions of this Ordinance shall apply to both parties:

Provided that the Public Solicitor may either—

- (a) assign a separate assistant to act for each party in connection with the proceedings; or
- (b) in his discretion refuse the application for legal aid or legal assistance made by one party and assign a Lay Advocate to that party under the provisions of the Lay Advocates Ordinance.

### **Offences**

**10.** Any person who furnishes any document, or supplies information, which he knows or believes is false for the purpose of procuring the grant of legal aid shall be guilty of an offence, and liable on conviction to imprisonment for a period not exceeding one year, or to a fine not exceeding £1,000, or both.

### **Revocation of grant of certificate**

**11.** The Public Solicitor—

- (a) shall revoke a certificate issued to an aided person, pursuant to section 8(1) of this Ordinance where such aided person has been convicted of an offence contrary to section 10 of this Ordinance; and may
- (b) revoke such certificate at any time on receipt of information tending to indicate that the aided person has committed such an offence,

and in either case the aided person shall forthwith cease to be an aided person for the purposes of this Ordinance.

### **Award of costs against aided persons**

**12.** Without prejudice to the general discretionary powers of a Court to award costs in any proceedings, where it appears that an aided person—

- (a) has obtained the issue of a certificate in contravention of section 10 of this Ordinance; or
- (b) has acted improperly or unreasonably in bringing or defending the proceedings, or in the conduct of them, the Court may make such Order against the aided person regarding the costs of the Public Solicitor and, where appropriate, the costs of any other party to the proceedings as it may deem appropriate.

### **Contributions by successful aided persons**

**13. (1)** Subject to the following subsections of this section, where an aided person is successful in proceedings in which he is or has been a party, either wholly or in part, and in respect of which a certificate has been issued under section 8(1) of this Ordinance, a contribution shall be payable by him to the Public Solicitor in an amount the equivalent of such percentage as regulations made under this Ordinance may from time to time prescribe, of the total sum of monies recovered or preserved for the aided person in the proceedings, whether on his own behalf or on behalf of a child.

**(2)** The Public Solicitor shall have and shall exercise a right of lien on and deduction from any such monies recovered of any contribution due under subsection (1).

**(3)** All contributions paid or recovered under subsection (1) and all contributions paid pursuant to section 8(1) of this Ordinance shall, on receipt, forthwith be paid by the Public Solicitor to the Financial Secretary for credit to the Consolidated Fund. The receipt of the Financial Secretary or any subordinate officer acting on his behalf shall be a sufficient discharge to the Public Solicitor and conclusive evidence of compliance with his obligations under this subsection.

**(4)** No contribution shall be payable under subsection (1) unless the total sum of monies recovered or preserved for the aided person in the proceedings exceeds the minimum contribution prescribed.

**(5)** The Public Solicitor, with the consent of the Governor, may by notice in writing to the aided person, waive, either in whole or in part, payment of any contribution due under either subsection (1) or section 8(1) of this Ordinance, where he is satisfied that payment or recovery thereof, will cause serious hardship to the aided person, and that in all the circumstances it is just and equitable not to enforce payment thereof.

**(6)** For the purposes of this section, proceedings shall be deemed to be successful where a sum of money is recovered or preserved for the aided person, either under an order of

the Court, or pursuant to a compromise or settlement reached to avoid or bring an end to such proceedings.

### PART III LEGAL SERVICES

#### Legal Services

**13A. (1)** The Public Solicitor may provide legal services to any person requesting or requiring such services.

**(2)** Legal services may be provided by the Public Solicitor in accordance with such fees as may be prescribed by the Public Solicitor, in consultation with the Executive Council by notice in the Gazette and, after having sought and obtained the approval of the Chief Justice.

**(3)** "legal services", for the purpose of this Part, means the provision of legal services by the Public Solicitor to any person not eligible for or seeking legal aid under Part II and excludes any services provided as legal aid.

### PART IV MISCELLANEOUS

#### Preparation and audit of accounts

**13B. (1)** The Public Solicitor shall cause to be kept such books, records and accounts as may be necessary to maintain an accurate and complete record of the financial affairs of his office.

**(2)** The Public Solicitor shall, as soon as practicable after the end of every financial year and within three months after the end of such year, cause a statement of accounts to be prepared reflecting the financial operations of his office during the preceding year.

**(3)** The accounts of each financial year shall be audited within three months of their submission for audit by a suitably qualified auditor, who shall be approved by the Governor on the advice of the Financial Secretary. A copy of the audited accounts and auditors report thereon shall be lodged with the Governor by the auditor as soon as practicable after the completion of the audit.

**(4)** A fee, as agreed between the auditor and the Financial Secretary, may be charged for an audit carried out under subsection (3) of this section.

**(5)** For the purpose of this section the term 'financial year' shall mean the period 1 April to 31 March."

#### Regulations

**14.** The Governor may, in his discretion, make regulations for the further and better execution of this Ordinance and, without prejudice to the generality of this power, such regulations may provide for—

- (a) anything which by this Ordinance is required or permitted to be prescribed;
- (b) any application or other forms required for any of the purposes of this Ordinance;
- (c) the form and contents of the certificate confirming the grant of legal aid;
- (d) the deductions which may be made from an applicant's income and capital, and generally the manner in which his disposable income and capital is to be calculated for the purposes of this Ordinance;

- (e) the contribution, by reference to a scale or otherwise, to be paid by certain aided persons, the maximum amounts of disposable income or disposable capital rendering an applicant ineligible for legal aid or legal assistance, and the minimum respective amounts thereof regulating the grant of a certificate free of charge;
- (f) the type or nature of any conditions which may be attached on the grant of a certificate;
- (g) for any security, and the nature thereof, to be given on the grant of a certificate by a parent or guardian who has applied on behalf of a child;
- (h) grounds additional to or in any way varying those specified in the Ordinance in respect of which a certificate may be refused or may or must be revoked;
- (i) the grant of legal aid in emergency cases, and the power to waive compliance with all or any of the obligations of an applicant under this Ordinance;
- (j) the amounts which may be deducted and paid over for credit to the Consolidated Fund from monies recovered or preserved for an aided person, who has been successful in proceedings, and generally the manner, by reference to a scale or otherwise in respect of which such amounts are to be calculated.
- (k) the prescribing of any fees or other matter for the provision of legal services.

### **Saving provisions**

**15.** Nothing in this Ordinance shall derogate from any of the provisions of the Lay Advocates Ordinance, and particularly the powers, duties and privileges of persons appointed Lay Advocates under that Ordinance.

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**LEGAL AID REGULATIONS – SECTION 14***(Legal Notice 7 of 2003)***Short title, commencement**

1. These regulations may be cited as the Legal Aid Regulations.

**Interpretation**

2. In these regulations, unless the context otherwise requires—  
“**aided person**” means a person who has been granted legal aid;  
“**disposable income**” and “**disposable capital**” have the meanings respectively assigned to them in Schedule I to these regulations;  
“**Ordinance**” means the Legal Aid and Legal Services Ordinance;  
“**person**” means a person as defined for the purposes of Parts I and II of the Ordinance.

**Application for certificate**

3. (1) Any person, whose disposable income and disposable capital are within the limits set out in Schedule I to these regulations, desiring legal aid may apply for legal aid in the Form I set out in Schedule II.

(2) Every application for legal aid shall contain such information and shall be accompanied by such documentation as may be requisite to enable the Public Solicitor to determine—

- (a) the nature of the proceedings in relation to which legal aid is sought and the circumstances in which legal aid is required;
- (b) the question whether it is proper that a certificate should be granted; and
- (c) the disposable income and disposable capital of the applicant.

**Issue of certificate**

4. (1) Subject to regulation 5, after the Public Solicitor has approved an application for a certificate he shall issue a certificate in the Form II set out in Schedule II.

(2) A certificate shall not relate to more than one prosecution, action, cause or matter, but may include proceedings for the enforcement of orders or agreements.

**Contributions**

5. (1) A person whose disposable income and disposable capital falls within Level A as set out in Schedule I to these regulations shall be entitled to free legal aid but may be required to pay a contribution towards the cost of providing such aid in accordance with subsections (3) and (4) of this section.

(2) A person whose disposable income and disposable capital falls within Level B as set out in Schedule I to these regulations shall be entitled to legal aid but will be required to pay the prescribed contributions set out in Table I of Schedule III. In addition such aided persons may be required to pay an additional contribution towards the cost of providing such aid in accordance with subsections (3) and (4) of this section.

(3) The Public Solicitor on granting a certificate may require an aided person to pay a contribution towards the provision of legal aid under the authority of the certificate if such aided person is successful in any proceedings in which he is or has been a party.

(4) The maximum amount of any contribution that an aided person may be required to pay under sub-regulation (3) shall be as set out in Table II of Schedule III.

(5) If a fee or contribution is payable for legal aid, it shall be paid in full to the Public Solicitor at such time and in such other manner as may be specified by the Public Solicitor.

## **Outlays**

6. In addition to the relevant fees and contributions payable under regulation 5, all persons who receive legal aid shall be liable to pay to the Public Solicitor all outlays paid by the Public Solicitor on their behalf, including court fees and the cost of overseas telephone and fax charges. Provided that the Public Solicitor may, in respect of persons whose disposable income and disposable capital falls within Level A, waive all or any of the payments required under this section.

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## **SCHEDULE I**

### **Calculation of Disposable Income and Disposable Capital and Contribution Categories**

#### **Calculation of Disposable Income and Disposable Capital**

1. (a) For the purposes of regulation 1 of the Regulations a persons 'disposable income' shall be—

- (i) if a person is living alone, the annual gross income of such person; or
- (ii) if a person is a member of a household, the aggregate annual gross income of the household of which he is a member and being such income over which he or she exercises control whether singly or jointly with other householders.

(b) In the event of an action between persons residing in the same household their income shall be treated separately for the purposes of determining their disposable income.

(c) If a person's disposable income does not exceed £5,000 he shall be eligible to make an application for legal aid.

2. For the purposes of regulation 1 of the Regulations a persons 'disposable capital' is the value of all the property that he owns, less the value of any of the following if owned by him, that is to say—

- (a) his wearing apparel;
- (b) the tools of trade;
- (c) his household furniture and effects;
- (d) his home if it is his sole place of residence; and
- (e) his motor vehicle if it is used during the course of and in connection with his employment.

3. If the value of a person's disposable capital does not exceed £3,600 he shall be eligible to make an application for legal aid.

### Contribution Categories

4. **Level A** – means if a persons 'disposable income' does not exceed £3,600 and his 'disposable capital' does not exceed £2,400.

5. **Level B** – means if a persons 'disposable income' exceeds £3,600 but does not exceed £5,000 and his 'disposable capital' exceeds £2,400 but does not exceed £3,600.

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## SCHEDULE II

### FORMS

#### FORM 1

#### Legal Aid and Legal Services Ordinance Legal Aid Regulations

### Application for Legal Aid

1. I .....hereby apply for legal aid from the Public Solicitor in the following matter .....

1. I declare that my net disposable family income is less than £....., and that my disposable cash or savings do not exceed £.....

2. <sup>†</sup>I authorise the Public Solicitor to .....

.....  
.....  
.....  
.....

[signature of applicant] .....

Date .....

<sup>†</sup> Delete if not appropriate

.....

**FORM II**Legal Aid and Legal Services Ordinance  
Legal Aid Regulations**Certificate of Legal Aid**

I certify that ..... is entitled to legal aid —

- without payment of a contribution pursuant to regulation 5; or\*
- upon payment of a contribution towards costs at the following rate and terms\*

\_\_\_\_\_  
Public Solicitor

Date \_\_\_\_\_

\*Delete if not appropriate

**SCHEDULE III****TABLE I****RATE OF CONTRIBUTION PAYABLE BY AIDED PERSONS**

Item	Matter	Contribution Level A	Contribution Level B
	<b><i>Criminal Appeals</i></b>		
1	Appeals against sentence	Nil	£10.00
2	Appeals against conviction	Nil	£20.00
	NB: Appeals against sentence and conviction will be charged at the rates for appeals against conviction (no accumulation of charges)		
	<b><i>Civil Appeals</i></b>		
3	All Appeals	Nil	£20
	<b><i>Criminal Cases/Motoring Offences</i></b>		
4	Plea in mitigation	Nil	£10
5	Trial	Nil	£20

	<b><i>Divorces</i></b>		
6	Uncontested	Nil	£10
7	Contested	Nil	£20
	<i>NB These charges include dealing with custody disputes — an uncontested divorce with a contested custody dispute would require a contribution at the contested rate</i>		
	<b><i>Ancillary Relief Connected to Divorce</i></b>		
8	Uncontested	Nil	£10
9	Contested	Nil	£20
	<b>All other Civil cases (except for debt cases)</b>		
10	Pre-action work	Nil	£5
11	Issue of proceedings	Nil	£5
12	Work done after issue of proceedings but before trial	Nil	£10
13	Trial	Nil	£20
	<b><i>Debt Cases</i></b>		
14	Up to and including issue of proceedings	Nil	£5
15	Uncontested trial	Nil	£10
	Contested trial	Nil	£20
	<b><i>Miscellaneous</i></b>		
	All non-contentious work	Nil	£10
	General advice, per consultation or attendance	Nil	£2
	Initial meeting concerning any matter (this includes first attendance at a police station or prison)	Nil	Nil

**TABLE II****PERCENTAGE RATES OF CONTRIBUTION****TOWARDS COST OF LEGAL AID BY SUCCESSFUL AIDED PERSONS**

An aided person, in addition to the fees set out in Table I, shall be required to pay, as a contribution towards the cost of supplying legal aid, the percentage set out in Column 1 of the Table of the amount recovered in Column 2 of the said Table. Provided that no contribution shall be payable if the total sum recovered does not exceed £75.

<b>Percentage Payable</b>	<b>Amount Recovered</b>
5%	Not exceeding £500
10%	Exceeding £500 but not exceeding £2000
15%	Exceeding £2000