



ASCENSION

REVISED EDITION OF THE LAWS, 2017

LAY ADVOCATES (ASCENSION) ORDINANCE, 2007¹

*Ordinance A1 of 2007
In force 1 February 2007*

No amendments to 1 November 2017

No subsidiary legislation to 1 November 2017

LAY ADVOCATES (ASCENSION) ORDINANCE, 2007

ARRANGEMENT OF SECTIONS

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AN ORDINANCE to provide for the appointment and duties of Lay Advocates and for the provision of legal aid in Ascension.

Short title

1. This Ordinance may be cited as the Lay Advocates(Ascension) Ordinance, 2007.

Interpretation

2. In this Ordinance, unless the context otherwise requires—
“**Board**” means the Legal Assistance Fund Advisory Board constituted under section 5;
“**Clerk**” means the Clerk of the Court appointed under section 9 of the Magistrates’ Court Ordinance, 1968;
“**Fund**” means the fund established in accordance with section 4(1);
“**Lay Advocate**” means a person appointed as such under section 3;

¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 November 2017.

“**Legal Aid Grant**” means a grant from the Fund to enable a Lay Advocate to secure the assistance of a legal practitioner in any particular case;

“**Magistrate**” means the person appointed as such under section 7 of the Magistrates’ Court Ordinance, 1968;

“**Public Solicitor**” means the person appointed as such under section 21 of the Legal Aid, Assistance and Services Ordinance, 2017 (SH).

Appointment of Lay Advocates

3. (1) The Public Solicitor, with the approval of the Governor, may appoint any fit and proper person to be a Lay Advocate.

(2) Any number of persons may hold the office of Lay Advocate simultaneously.

(3) Without affecting subsection (4), a Lay Advocate may resign office at any time by notice in writing to the Public Solicitor.

(4) The Public Solicitor, with the approval of the Governor, may remove any person from the office of Lay Advocate.

Rights of Lay Advocates and immunity from suit

3A. (1) A Lay Advocate is entitled—

(a) to appear and be heard on behalf of any party to proceedings before any court or tribunal exercising any lawful jurisdiction in Ascension;

(b) to receive the co-operation and assistance of the Public Solicitor and the staff of that office with regard to any research or enquiry concerning questions of law and access to law reports and legal text books, but to the extent only that such co-operation and assistance is consistent with the responsibilities and duties of that office;

(c) if at any time there is no subsisting appointment to the office of Public Solicitor or if the Public Solicitor is absent from Ascension - to receive at all reasonable times the co-operation and assistance of the Crown Counsel with regard to the several matters set out above;

(d) to visit, at all reasonable times, any detained person who has asked to see a Lay Advocate for the purposes of obtaining legal advice; and to consult with such person in private, except in so far as such consultation would entail a risk to the security of the establishment in which the person is detained.

(2) A Lay Advocate may give advice and assistance on matters of law to any person requesting such advice.

(3) A Lay Advocate is not liable to be sued in any civil court for any act he or she does in exercise of the powers and rights or performance of the duties of the office under this Ordinance, if the act complained of was done in good faith and in a manner in all respects consistent with this Ordinance.

Obligations of Lay Advocates

3B. (1) A Lay Advocate must not—

- (a) charge or levy any charge or fee for services provided under section 3A;
 - (b) give any advice or assistance, or appear as an advocate before any court or tribunal, in respect of any case or matter in which he or she has any personal interest which would or might conflict with the interests of the person being assisted or represented.
- (2) Every Lay Advocate must—
- (a) take all reasonable care to ensure that the advice and assistance given to any person are founded upon an accurate understanding of the relevant law; and seek any necessary advice from the Public Solicitor’s Office for that purpose;
 - (b) keep a written record of the name of every person given advice or assistance by the Lay Advocate, together with a note of the general nature of the problem discussed and the advice given on it; and supply a copy of such record, on request, to the person advised;
 - (c) treat all information received from any person who consults the Lay Advocate in that capacity as having been given in the strictest confidence, subject to this Ordinance or any other law.

Public Solicitor to supervise Lay Advocates

- 3C.** Every Lay Advocate must comply with –
- (a) any lawful guidance or instructions issued from time to time by the Public Solicitor as to the performance of the duties and the exercise of the rights of a Lay Advocate; and
 - (b) any request (not being a request for the disclosure of confidential information) for information similarly issued.

Court may order disclosure of information

3D. (1) The Supreme Court or the Magistrates’ Court may, subject to this section, order a Lay Advocate to disclose information to which this section relates either to the Attorney General or to any other person named in the order.

(2) This section relates to any information received by a Lay Advocate in the course of his or her duties under this Ordinance.

(3) An order must not be made under this section unless the court is satisfied that the disclosure of the information is of such urgent and compelling necessity in the public interest as to justify over-ruling the principle of confidentiality stated in section 5(2)(c).

(4) The Chief Justice may make rules to prescribe the procedure to be followed in respect of an application under this section.

Ascension Legal Assistance Fund

4. (1) The Governor must establish a Special Fund², in accordance with section 3(2) of the Financial Management Ordinance, 2001 for the purpose of promoting and

² The fund was established by Legal Notice A2 of 2007.

encouraging the establishment of schemes or arrangements for the dissemination of information about the law and its administration, and ensuring (so far as is practicable) that legal advice and assistance is available to members of the public by whom it is sought.

(2) The accounting officer for the Fund is the Clerk.

(3) The Fund comprises all moneys from time to time appropriated to it from the Consolidated Fund, and all other sums raised or received for the purposes of the Fund, together (notwithstanding section 8(3) of the Financial Management Ordinance, 2001) with interest or dividends accruing to it or on it.

Legal Assistance Fund Advisory Board

5. (1) This section establishes a Board, to be known as the Legal Assistance Fund Advisory Board, whose members are to be—

- The Magistrate;
- The Attorney General;
- The Public Solicitor;
- All of the Justices of the Peace of Ascension.

(2) The Clerk is to act as the Secretary to the Board and must ensure that a meeting of the Board is convened annually in (or as soon as is practicable after) March of each year.

(3) Each meeting of the Board must be chaired by the Magistrate or, if the Magistrate is not present, by the most senior (according to date of appointment) of the Justices of the Peace who are present.

(4) The functions of the Board are to advise the Clerk on the policies to be adopted with regard to making payments from the fund and, in particular –

- (a) as to the making of payments to Lay Advocates by way of periodical honoraria, payment for particular work done, or the reimbursement of expenses incurred;
- (b) as to the provision of law books or other resources, and training, for the benefit of Lay Advocates;
- (c) the circumstances in which, subject to section 6, a Legal Aid Grant may be made;
- (d) (subject to the approval of the Governor) the reimbursement of expenses or the payment of an allowance to members of the Board in connection with the performance of their duties.

(5) Meetings of the Board may be held by means of a conference between members of the Board who are not all in one place but each of whom is able to hear (and be heard by) each of the others simultaneously, and each member taking part in such a conference is deemed (for all purposes of this Ordinance) to be present at the place stated in the notice convening the meeting as the place at which the meeting would be held.

Legal Aid Grants

- 6. (1)** Upon receiving an application for a Legal Aid Grant, the Clerk must convene an *ad hoc* Committee comprising –
- (a) one of: the Attorney General, the Public Solicitor, and the Magistrate;
 - (b) one Justice of the Peace; and
 - (c) one Lay Advocate;
- (the choice of members being such, so far as is practicable in the circumstances of Ascension, to avoid or minimise conflicts of interest).
- (2)** The Committee so convened must advise the Clerk whether or not a Legal Aid Grant should be made and (if so) in what amount.
- (3)** The Committee must have regard to the following matters –
- (a) any policy made by the Board under section 5(4)(c);
 - (b) whether the matter in respect of which the Grant is sought is one which appears to involve an arguable point of law;
 - (c) the means of the client and whether the client could reasonably be expected to obtain appropriate advice wholly or partially at the client’s own expense;
 - (d) generally, whether it is in the public interest that legal advice should be paid for from public funds;
 - (e) the current financial state of the Fund and known commitments to be charged in the current financial year.
- (4)** The Committee may require, as a condition of making a Legal Aid Grant, that the amount of it is to be repaid out of any money or property recovered or preserved as a result of legal advice paid for by the Grant, and may require security for the payment of any such repayment.
- (5)** If a matter which has been the subject of an application for a Legal Aid Grant becomes the subject of litigation before the Magistrates’ Court, any Justice of the Peace who was a member of the *ad hoc* committee constituted under subsection (1) must not sit as a member of the court which deals with that matter.
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