

A BILL

entitled

LEGAL AID AMENDMENT ACT 2011

TABLE OF CONTENTS

1	Citation
2	Amends section 3
3	Inserts sections 3A and 3B
4	Amends section 9
5	Amends section 11
6	Amends section 13A
7	Amends section 16
8	Inserts sections 17A and 17B
9	Amends First Schedule
10	Amends Third Schedule
11	Amends Legal Aid (General) Regulations 1980
12	Commencement and transitional

WHEREAS it is expedient to amend the Legal Aid Act 1980 and the Legal Aid (General) Regulations 1980 with a view to reducing the public cost of providing legal aid, and to make consequential amendments;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Legal Aid Act 1980 ("the principal Act") and the Legal Aid (General) Regulations 1980, may be cited as the Legal Aid Amendment Act 2011.

Amends section 3

2 In section 3 of the principal Act—

- (a) at the beginning of subsection (1)(b) insert "subject to subsection (1B)";
- (b) in subsection (1)(c) after "and" insert ", subject to subsection (1B),";
- (c) after subsection (1A) insert—

LEGAL AID AMENDMENT ACT 2011

“(1B) Legal aid may only be granted in family law proceedings if those proceedings involve questions of custody, access, adoption, maintenance or support of a child under the age of 18 years.

(1C) In subsection (1B), “family law proceedings” means proceedings brought under the Adoption of Children Act 1963, the Matrimonial Causes Act 1974, the Matrimonial Proceedings (Magistrates’ Courts) Act 1974, the Succession Act 1974, the Children Act 1998 or the Adoption of Children Act 2006.”;

(d) in subsections (2) and (3), after “sections” insert “3A, 3B,”.

Inserts sections 3A and 3B

3 After section 3 of the principal Act insert—

“Limitations on grant of legal aid in civil proceedings to non-Bermudians

3A (1) Subject to subsection (2), legal aid in civil proceedings may not be granted to a person unless that person—

- (a) possesses Bermudian status under the Bermuda Immigration and Protection Act 1956;
- (b) is the spouse of a person who possesses Bermudian status; or
- (c) holds a permanent resident’s certificate under the Bermuda Immigration and Protection Act 1956.

(2) Subsection (1) does not apply to any proceedings which relate to—

- (a) immigration;
- (b) human rights challenges against the Government; or
- (c) family law proceedings falling within section 3(1B).

When a legal aid certificate may be granted

3B (1) Legal aid in civil proceedings may only be granted if the Committee is satisfied, after making inquiries under section 9, that the applicant appears to have a reasonable prospect of succeeding on the merits of the case.

(2) The Minister may make regulations providing guidelines that the Committee shall follow in deciding whether or not to grant legal aid in judicial review proceedings.”

Amends section 9

4 The heading of section 9 is repealed and replaced with “Power to make inquiries as to means and merits”.

Amends section 11

5 In Section 11 of the principal Act—

- (a) in subsection (1) repeal “Subject to subsection (2); and

LEGAL AID AMENDMENT ACT 2011

(b) repeal subsection (2).

Amends section 13A

6 In section 13A(2) of the principal Act repeal “, subject to subsection (3),”.

Amends section 16

7 In section 16(2)(d) of the principal Act, repeal “and payable otherwise than by another assisted person”.

Inserts sections 17A and 17B

8 After section 17 of the principal Act insert—

“Revocation of certificate where assets subject to confiscation order

17A (1) An assigned counsel shall, upon receipt of information from any source that an assisted person he is representing is subject to a confiscation order under section 9 or 10 of the Proceeds of Crime Act 1997 (“a confiscation order”)—

(a) notify the Committee in writing immediately, attaching a copy of the confiscation order; and

(b) give a copy of the notice to the assisted person.

(2) When the Committee receives information under subsection (1) or is otherwise informed of the issue of a confiscation order in relation to an assisted person, the Committee shall if it thinks fit—

(a) if the confiscation order is issued prior to the grant of the certificate, revoke the person’s certificate *ab initio*; or

(b) if the confiscation order is issued after the grant of the certificate, discharge the person’s certificate with effect from the date of the confiscation order.

(3) Subsections (1C), (2), (3) and (4) of section 17 shall, with the necessary modifications, apply where a certificate is revoked or discharged under this section.

No costs payable if all parties assisted

17B Notwithstanding any other law, no court shall, upon determining any cause or matter in which all parties are assisted persons, make any order as to the payment of costs by any such assisted person to any other party in the cause or matter. ”

Amends First Schedule

9 In paragraph 1(1) of the First Schedule of the principal Act, after “resident” insert “in”.

Amends Third Schedule

10 In the Third Schedule to the principal Act—

LEGAL AID AMENDMENT ACT 2011

(a) repeal Part B of the table in paragraph 1(3) and substitute—

“
Part B - Capital

Disposable Capital Bracket	Capital Portion
Less than \$10,000	\$500
\$10,000 or more but less than \$15,000	50% of the amount by which the disposable capital exceeds \$10,000
\$15,000 or more but less than \$20,000	75% of the amount by which the disposable capital exceeds \$10,000

”; and

(b) repeal paragraph 3 and substitute—

“3 A person’s disposable capital includes all assets located in Bermuda and overseas (including land, timeshares, private vehicles, shares and fixed deposits) less the value of any of the following if owned by him—

- (a) clothes;
- (b) occupational tools;
- (c) household furniture and effects; and
- (d) any owner-occupied single unit dwelling with an annual rental value not exceeding \$24,000 as assessed under the Land Valuation and Tax Act 1967.”

Amends Legal Aid (General) Regulations 1980

11 In regulation 7(3) of the Legal Aid (General) Regulations 1980—

- (a) in paragraph (a)(i) delete “eight thousand and fifty dollars” and substitute “\$18,000”; and
- (b) in paragraph (a)(ii) delete “seven thousand dollars” and substitute “\$20,000”.

Commencement and transitional

12 (1) This Act comes into operation on such day as the Minister responsible for legal aid may appoint by notice published in the Gazette.

(2) But if, before the coming into operation of this Act, a person has been granted a legal aid certificate in relation to any proceedings, it shall continue until the end of those proceedings, notwithstanding that a certificate for those proceedings would not be granted to that person after the coming into operation of this Act.

LEGAL AID AMENDMENT BILL 2011

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Legal Aid Act 1980 (the “principal Act”) to reduce the public cost of providing legal aid.

Clause 1 makes provision for the short title of the Bill.

Clause 2 amends section 3 of the principal Act to limit legal aid granted for family law proceedings to certain proceedings involving questions of custody, access, adoption, maintenance or support of a child under the age of 18 years.

Clause 3 amends the principal Act to insert new sections 3A and 3B. Section 3A restricts the types of civil proceedings for which persons may be granted legal aid if they are not Bermudian or the spouse of a Bermudian or do not hold a permanent resident’s certificate. Section 3B provides that legal aid in civil proceedings may be granted only where the Committee considers that the applicant appears to have reasonable prospect of success. Section 3B also empowers the Minister to make regulations to provide guidelines to be followed by the Committee in determining whether to grant legal aid in judicial review proceedings.

Clause 4 replaces the heading of section 9 to clarify that the section empowers the Committee to make inquiries as to the merits of the case, as well as make inquiries as to the applicant’s means for purposes of eligibility and liability to make a contribution.

Clause 5 makes a consequential amendment to section 11 of the principal Act by repealing subsection (2) in line with the requirements that a contribution of \$500 is payable by an assisted person who has disposable capital of less than \$10,000 (such a person was previously exempt).

Clause 6 makes a consequential amendment to section 13A of the principal Act to remove a reference to subsection (3) which was missed when subsection (3) was deleted in 2003.

Clause 7 makes an amendment to section 16(2)(d) which is consequential on new section 17B inserted by clause 8.

Clause 8 amends the principal Act to insert new sections 17A and 17B. Section 17A requires that where an assisted person is made subject to a confiscation order under the Proceeds of Crime Act 1997, the Committee shall if it thinks fit revoke or discharge the certificate for legal aid granted to such person. Certain provisions of section 17 (which deals with revocation of certificates in other circumstances) are applied so as to allow the assisted person an opportunity to show cause why the certificate should not be revoked or discharged; to provide that the revocation or discharge does not affect the right of counsel to receive remuneration for work done before revocation or discharge took effect; to deal with provision of notices to the Registrar and assigned counsel; and to allow the Attorney General to recover from the assisted person any amounts paid out in consequence of the certificate. Section 17B requires that in proceedings in which all the parties are assisted

LEGAL AID AMENDMENT BILL 2011

persons the court should not make an order for costs to be payable by an assisted person.

Clause 9 corrects a typographical error in paragraph 1(1) of the First Schedule to the principal Act.

Clause 10 amends the Third Schedule to the principal Act in order to provide a revised formula for calculating the financial contribution to be made by an assisted person so as to increase such contribution.

Clause 11 amends regulation 7(3) of the Legal Aid (General) Regulations 1980 to increase the income and capital amounts in excess of which a certificate would be discharged by the Committee. This corrects a missed consequential as the Regulations should have been amended to increase these amounts when section 10 of the Act was subject to a similar amendment in 2003.

Clause 12 provides for commencement and transitional provisions.