

LEGAL AID AND ASSISTANCE ACT

Principal Act

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| Act. No. 1960-23 | <i>Commencement</i> | 1.1.1961 |
| | <i>Assent</i> | 24.11.1960 |

| Amending enactments | Relevant current provisions |
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| Act. 1968-34 | s. 13(1), Sch. |
| 1969-29 | s. 3A, Sch. |
| 1973-31 | s. 13(1) |

English sources

Poor Prisoners' Defence Act 1930 (20 & 21 Geo.5 c.32)
Summary Jurisdiction (Appeals) Act 1933 (23 & 24 Geo.5 c.38)
Legal Aid and Advice Act 1949 (12, 13 & 14 Geo.6 c.51)

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AN ACT TO MAKE BETTER PROVISION FOR THE GRANTING OF FREE LEGAL AID AND ASSISTANCE TO PERSONS OF SMALL MEANS, TO ENABLE THE COST OF SUCH LEGAL AID AND ASSISTANCE FOR SUCH PERSONS TO BE DEFRAIDED OUT OF THE CONSOLIDATED FUND, AND FOR PURPOSES CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Legal Aid and Assistance Act.

PART 1. CRIMINAL PROCEEDINGS.*

Interpretation.

2. In this Part, unless the context otherwise requires—

“certificate” means a certificate for legal aid;

“legal aid” means legal aid under this Part.

Legal aid for persons committed for trial.

3.(1) Any person committed for trial for an indictable offence shall be entitled to free legal aid in the preparation and conduct of his defence at the trial, and shall be entitled to have counsel assigned to him for that purpose, if a certificate is granted in respect of that person under this section. *(1930 c. 32, s.1)*

(2) A certificate may, subject to the provisions of subsection (3), be granted in respect of any person—

(a) by the committing justice, upon the person being committed for trial; or

(b) by the Chief Justice, at any time after reading the depositions (whether or not an application has previously been made to the committing justice).

(3) A certificate shall not be granted under this section in respect of any person unless it appears to the committing justice or the Chief Justice that his means are insufficient to enable him to obtain such aid.

* See also *Criminal Procedure Act, s203(3)*.

Legal aid on appeal.

3A. The Chief Justice or the Court of Appeal may at any time assign counsel to an appellant un any appeal, or proceedings preliminary or incidental to an appeal, in which in the opinion of the Chief Justice or the Court of Appeal, it appears desirable in the interests of justice that the appellant should have legal aid and that he has not sufficient means to enable him to obtain that aid.

Legal aid in magistrates' court.

4. Any person who appears or is brought before an examining justice or the magistrates' court charged with an indictable offence or an offence which is punishable, on summary conviction, with imprisonment, other than imprisonment in default only of payment of a fine, may apply to the justice or court, as the case may be, for free legal aid in the preparation and conduct of his defence before that justice or court, and, if on such application the justice or court is satisfied that the applicant has insufficient means to enable him to obtain legal aid for the purpose aforesaid, the justice or court shall grant in respect of the applicant a certificate which shall entitle him to have counsel assigned to him for that purpose.

Legal aid for appellants in certain cases.

5.(1) Any person who has been convicted by the magistrates' court of an offence which is punishable with imprisonment, other than imprisonment in default only of payment of a fine, and who desires to appeal to the Supreme Court against the conviction or the sentence imposed on such conviction or both may apply to such court for free legal aid for the preparation and conduct of his appeal, and, if on such application the court is satisfied that the applicant has insufficient means to enable him to obtain legal aid for the purpose aforesaid, the court shall grant in respect of the applicant a certificate which shall entitle him to have counsel assigned to him for that purpose.

(2) Any person who has been convicted by the magistrates' court of any offence other than an offence mentioned in subsection (1) and who desires to appeal to the Supreme Court against the conviction or the sentence imposed on such conviction or both may apply to such court for free legal aid for the preparation and conduct of his appeal, and if on such application the court is satisfied that the applicant has insufficient means to enable him to obtain legal aid for the purpose aforesaid and that by reason of exceptional circumstances it is desirable in the interests of justice that he should have such aid, the court may grant in respect of the applicant a certificate which shall entitle him to have counsel assigned to him for that purpose.

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(3) Where, on an application made under subsection (1) or subsection (2), the court has refused to grant such certificate, the applicant may apply to the Chief Justice, and the Chief Justice shall have the like power, exercisable on the like grounds, of granting a certificate as the magistrates' court.

(4) The provisions of this section shall apply mutatis mutandis to any applicant or respondent in any proceedings by way of mandamus, habeas corpus or case stated or to any appellant or respondent in any criminal cause or matter or to any person brought before the magistrates' court on extradition proceedings.¹

Application by letter.

6.(1) An application for free legal aid under section 4 or 5 may be made by letter and may be so made by any person arrested or summoned for an offence, as well as by a person charged with an offence before the magistrates' court or examining justice.

(2) A letter applying for free legal aid by virtue of this section shall be addressed to the clerk to the justices and shall contain particulars of the offence charged and shall set out the grounds of the application.

(3) Where an application is made by virtue of this section any justice shall have the like power, exercisable on the like grounds, of granting a certificate as the magistrates' court or examining justice would have if the applicant had been charged with an offence before them.

(4) The refusal of a certificate on an application made by letter shall not prevent the applicant being granted a certificate at the hearing.

Duty to give information.

7.(1) Before a person is granted legal aid under any of the sections contained in this Part, he may be required to furnish a written statement in the prescribed form about matters relevant for determining whether his means are insufficient to enable him to obtain legal aid.

(2) A person who in furnishing a written statement in accordance with the provisions of subsection (1) or in applying for legal aid in accordance with the provisions of this Part, knowingly makes any false statement or false representation, is guilty of an offence and is liable, on summary conviction, to imprisonment for four months and to a fine of £100.

¹ see also *Criminal Procedure Ordinance, s.293(4)(b)*.

Counsel.

8.(1) A panel of barristers willing to act for persons receiving legal aid under this Part shall be prepared and maintained in accordance with the directions of the Chief Justice.

(2) Counsel shall be assigned to any person applying for free legal aid under this Part in such manner as the Chief Justice may direct, and shall be remunerated out of the Consolidated Fund in accordance with such scale as may be prescribed by rules made by the Governor.

Copies of depositions, etc.

9. Where counsel has been assigned to any person under the provisions of section 3 or section 5, that person shall be entitled to receive without charge—

- (a) if he has been committed for trial, a copy of the depositions taken in the proceedings for his committal; or
- (b) if he is appealing against conviction or sentence by the magistrates' court, a copy of the notes of the proceedings at his trial before that court made by the clerk of the court,

and, in either such case, a copy of any documents which were exhibits in such proceedings.

Rules for the purposes of Part I.

10. The Chief Justice may make such rules as appear to him necessary or desirable for giving effect to this Part.

PART II.
CIVIL PROCEEDINGS.**Interpretation.**

11. In this Part, unless the context otherwise requires—

“court” means any court, tribunal or person in respect of proceedings before which or whom legal assistance may be given under the provisions of this Part;

“legal assistance” means legal assistance under this Part;

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“order for costs” includes any judgment, order, decree, award or directions for the payment of the costs of one party in the proceedings by another party, whether given or made in those proceedings or not;

“panel” means the panel of solicitors and barristers constituted in accordance with the provisions of section 15;

“person” does not include a body of persons corporate or unincorporate so as to authorize legal assistance to be given to such a body;

“Registrar” means the Registrar of the Supreme Court;

“solicitor” means any barrister or solicitor practicing as a solicitor in Gibraltar;

“tribunal” includes an arbitrator or umpire however appointed and whether the arbitration takes place under a reference by consent or not.

Scope and conditions of legal assistance in civil proceedings.

12.(1) The provisions of this Part provide for, and relate only to, legal assistance in connection with proceedings before courts and tribunals in Gibraltar not being proceedings in respect of which a certificate may be granted under Part I.

(2) The proceedings in connection with which legal assistance may be given are any proceedings of a description mentioned in Part I of the Schedule, except proceedings mentioned in Part II of that Schedule.

(3) Legal assistance shall consist of representation, on the terms provided for by this Part, by a solicitor and, so far as necessary, by a barrister including all such assistance as is usually given by solicitor or barrister in the steps preliminary or incidental to any proceedings or in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

(4) A person shall not be given legal assistance in connection with any proceedings unless the Registrar is satisfied that such person has reasonable grounds for taking, defending or being a party thereto and may also be refused legal assistance if it appears to the Registrar unreasonable that he should receive it in the particular circumstances of the case.

(5) Save as expressly provided by or under this Act—

- (a) the fact that the services of a barrister or a solicitor are given by way of legal assistance shall not affect the relationship between the rights of barrister, solicitor and client or any privilege arising out of such relationship; and
- (b) the rights conferred by this Part on a person receiving legal assistance shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court is normally exercised.

Financial conditions of legal assistance.

13. (1) Subject to this Part legal assistance shall be available for any person whose income does not exceed £750 a year:

Provided that a person shall be refused legal assistance if he has a capital of more than £350 unless it appears that he cannot afford to proceed without legal assistance.

(2) Where a person receives legal assistance in connection with any proceedings—

- (a) notwithstanding the provisions of any law regulating the fees and charges payable to any court in respect of any proceedings, no such fees or charges shall be payable by a person receiving legal assistance in respect of any proceedings in connection with which legal assistance has been given to such person unless the Registrar shall, in accordance with the provisions of section 14, otherwise order;
- (b) his solicitor and barrister shall not take payment in respect of the legal assistance except such payment as is directed by this Part to be made out of the Consolidated Fund;
- (c) any sums recovered by virtue of an order or agreement for costs made in his favour with respect to the proceedings shall be paid to the Consolidated Fund.

Application and grant of legal assistance.

14.(1) Application for legal assistance in connection with any proceedings shall be made in writing to the Registrar.

(2) A person applying for legal assistance may, in his application therefor, select from the panel a solicitor or barrister to represent him in the

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proceedings if a certificate is issued to him under subsection (4). If no such selection is made, the Registrar shall select a solicitor or barrister from the panel to represent the person so applying if such a certificate is issued to him.

(3) The Registrar shall refer the application to a solicitor or barrister on the panel, who shall not be the person selected by the applicant or, as the case may be, by the Registrar under subsection (2), nor a person in the same firm as the person so selected. The solicitor or barrister to whom the application is referred shall investigate the merits of the applicant's case and report thereon to the Registrar.

(4) The Registrar shall investigate the means of the applicant and if, as a result of such application and of the report submitted under subsection (3), he is of opinion that the matter is a proper one for legal assistance to be given in accordance with the provisions of this Part he shall issue a certificate to the applicant and shall state in that certificate whether or not any fees or charges shall be payable to the court in respect of the proceedings. In any case which, in his opinion, is, or is likely to become, of exceptional difficulty or importance, the Registrar may state in the certificate that the case is such that the applicant should be represented by two barristers at the trial of any proceedings arising out of the matter.

(5) A barrister or solicitor to whom an application is referred under subsection (3) shall, upon submitting a report on the application to the Registrar, be paid such fee as may be prescribed in accordance with section 19.

Solicitors and barristers.

15.(1) A panel shall be prepared by the Registrar of solicitors and barristers willing to act for persons receiving legal assistance –

Provided that this subsection shall not prejudice the rights of a solicitor or barrister to refuse or give up a case on reasonable grounds.

(2) Subject to this Part, a solicitor or barrister acting for a person receiving legal assistance shall be paid fees and costs for so acting out of the Consolidated Fund in accordance with such scale as may be prescribed in accordance with section 19.

(3) Nothing in this section shall prejudice paragraph (b) of section 12(5) and in particular subsection (2) of this section shall not affect the sums recoverable by virtue of an order for costs made in favour of a person who has received legal assistance or of an agreement for costs so made which provides for taxation.

Adaptation of rights to indemnity.

16.(1) This section shall have effect for the purpose of adapting in relation to this Part any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Part shall be disregarded.

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal assistance in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, to the Consolidated Fund) the right shall inure also for the benefit of the Consolidated Fund as if the expenses incurred by the Consolidated Fund on behalf of that person in connection with the proceedings had been incurred by him.

(4) Where—

- (a) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and
- (b) those liable have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity,

the right to be indemnified shall be treated for the purposes of subsection (3) as not being subject to that condition.

(5) Nothing in subsections (3) and (4) shall be taken as depriving any person or body of persons of the protection of any law or, save as provided in subsection (4), as conferring any larger right to recover money for the benefit of the Consolidated Fund in respect of any expenses than the person receiving legal assistance would have had if the expenses had been incurred by him.

(6) When under subsection (3) a person's right to be indemnified against expenses incurred in connection with any proceedings inures for the benefit of the Consolidated Fund, any sum recovered for the benefit of the Consolidated Fund shall be deducted from the total of all sums payable out

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of the Consolidated Fund in respect of such proceedings and the balance remaining shall be the maximum recoverable from such person under the provisions of section 17(4).

Award of costs.

17.(1) A court may make an order for costs in favour of or against a person receiving legal assistance in the same manner and to the same extent as it may make an order for costs in favour of or against any other person.

(2) Where a court makes an order for costs against a person receiving legal assistance, there shall be payable out of the Consolidated Fund to a party not receiving legal assistance in whose favour such order for costs is made costs of such amount as might have been awarded to such party if such party had been legally assisted and the Registrar had ordered, under section 14(4), that fees and charges should be payable, if, and only if, the person receiving legal assistance was the plaintiff, petitioner or applicant in the proceedings or, in the case of an appeal, was the plaintiff, petitioner or applicant in the proceedings against the decision in which the appeal was made.

(3) The court making an order for costs against a person receiving legal assistance shall specify in such order the limit of liability of such person:

Provided that the court may adjourn, on such terms as it may think, and refer any question relevant to the determination of such liability to the Registrar, requiring him to report thereon to the court.

(4) Where a sum in respect of costs is paid out of the Consolidated Fund in accordance with the provisions of this section, there shall be payable to the Consolidated Fund by the assisted person against whom the order for costs was made such sum, or such lesser amount as may have been assessed as the limit of liability of such assisted person in accordance with rules made under section 19. The sum payable to the Consolidated Fund may be paid in one sum or by instalments as the court may order.

(5) Any sum payable by a person receiving legal assistance in accordance with the provisions of subsection (4) shall be a debt due to the Government, but the dwelling house, household furniture and tools and implements of the trade of such person shall be protected from seizure in execution to enforce any order made by a court to enforce recovery of such sum.

Power of Chief Justice to make rules.

18. (1) Subject to the provisions of section 19, the Chief Justice may make such rules as appear to him necessary or desirable for giving effect to this Part or for preventing abuses thereof.

(2) Without prejudice to the generality of subsection (1) or any other provision in this Act authorizing the making of rules, such rules may—

- (a) make provision as to the proceedings which are or are not to be treated as distinct proceedings for the purposes of legal assistance and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to proceedings treated as distinct;
- (b) regulate the procedure of any court or tribunal in relation to legal assistance and in particular make provision as to the cases in which and the extent to which a person receiving legal assistance may be required to give security for costs and the manner in which it may be given;
- (c) make provision as to the information to be given by a person seeking or receiving legal assistance;
- (d) make provision as to the cases in which a person may be refused legal assistance by reason of his conduct when seeking or receiving legal assistance whether in the same or in a different matter;
- (e) make provision for the recovery of sums due to the Consolidated fund including provision—
 - (i) for the enforcement for the benefit of the Consolidated Fund of any order or agreement for costs made in favour of a person who has received legal assistance; and
 - (ii) for making a solicitor's or barrister's right to payment out of the Consolidated Fund wholly or partly dependent upon his performance of any duties imposed on him by rules made for the purposes of this paragraph;
- (f) make provision as to the application of this Part in relation to persons who have been admitted to take, defend or be a party to any proceedings in forma pauperis or as poor persons and to other persons concerned in proceedings commenced before date of commencement of this Act.

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(3) The Chief Justice may also make rules modifying any provisions of this Part so far as appears to the Chief Justice necessary to meet the circumstances where—

- (a) a person seeking or receiving legal assistance—
 - (i) is not resident in Gibraltar;
 - (ii) is concerned in a representative, fiduciary or other capacity; or
 - (iii) is concerned jointly with or has the same interest as other persons whether receiving legal assistance or not;
 - (iv) has available to him rights and facilities making it unnecessary for him to take advantage of this Part or has a reasonable expectation of receiving financial or other help from a body of which he is a member;
- (b) a person seeks legal assistance in a matter of special urgency;
- (c) a person begins to receive legal assistance after having consulted a solicitor in the ordinary way with respect to the same matter or ceases to receive legal assistance before the matter in question is finally settled;
- (d) there is any relevant change of circumstances while a person is receiving legal assistance.

Power of Government to make rules.

19. The Governor may make rule—

- (a) as to the manner in which the rate of a person's income and the amount of his capital are to be computed for the purpose of this Part and the court, person or authority by whom such computation shall be made;
- (b) for determining whether any resources are to be treated as income or capital and for taking into account fluctuations of income;
- (c) ensuring that the resources of a person seeking or receiving legal assistance shall not be treated as including the subject matter of the dispute;

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- (d) determining the extent to which any resources of a person's husband or wife shall be treated as that person's resources for the purpose of this Part;
- (e) in relation to minors and other special cases, for taking into account the resources of other persons;
- (f) amending the Schedule and describing the proceedings to be included or excluded by reference to the issues, to the capacity in which the person requiring legal assistance is concerned, or otherwise;
- (g) prescribing the extent and limit of the liability for costs of an assisted person against whom an order for costs is made;
- (h) prescribing the scale of fees which shall be paid to a solicitor or barrister submitting a report in accordance with the provisions of section 14;
- (i) prescribing the scale of fees which shall be paid to a solicitor or barrister acting for a person receiving legal assistance.

Proceedings for misrepresentations, etc.

20.(1) A person seeking or receiving legal assistance who—

- (a) wilfully fails to comply with any rules as to the information to be supplied by him; or
- (b) in furnishing any information required by such rules knowingly makes any false statement or false representation,

is guilty of an offence and is liable, on summary conviction, to imprisonment for six months and to a fine of £100.

(2) Any proceedings for an offence under subsection (1) may, notwithstanding any law prescribing the time within which such proceedings may be brought, be brought within two years after the commission of the offence or within six months next after the first discovery thereof by the prosecutor, whichever is the shorter.

SCHEDULE.

Section 12.

PROCEEDINGS FOR WHICH LEGAL ASSISTANCE MAY BE GIVEN UNDER SECTION 12.

PART I.

DESCRIPTION OF PROCEEDINGS.

1. Proceedings in any of the following courts—

- (a) Supreme Court;
- (b) Court of First Instance;
- (c) magistrates' court in its civil jurisdiction in domestic proceedings;
- (d) Court of Appeal.

2. Proceedings before any person to whom a case is referred in whole or in part by any of the said courts.

PART II.

EXCEPTED PROCEEDINGS.

1. Proceedings wholly or partly in respect of—

- (a) defamation;
- (b) *omitted*;
- (c) the loss of services of a woman or girl in consequence of her rape or seduction;
- (d) the inducement of one spouse to leave or remain apart from the other.

2. Relator actions.

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3. Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.
4. Election petitions under the Parliament Act.
5. In the Court of First Instance, proceedings for or consequent on the issue of a judgment summons and, in the case of a defendant, proceedings where the only question to be brought before the court is as to the time and mode of payment by him of debt (including liquidated damages) and costs.
6. Proceedings incidental to any proceedings mentioned in this Part of this Schedule.