ACCESS TO JUSTICE (JERSEY) LAW 2019

Official Consolidated Version

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Jersey

ACCESS TO JUSTICE (JERSEY) LAW 2019

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ACCESS TO JUSTICE (JERSEY) LAW 2019

A LAW to make provision for improving access to justice by establishing a legal aid scheme, and for connected purposes.

Commencement [see endnotes]

1 Interpretation[1]

In this Law, unless the context otherwise requires –

"applicant" means an applicant for legal aid;

"Law Society" has the meaning given by Article 1(1) of The Law Society of Jersey Law 2005;

"Legal Aid Guidelines Advisory Committee" means the committee established under Article 6;

"Legal Aid Guidelines" means the guidelines made under Article 7(1) or any revisions to the Legal Aid Guidelines under Article 7(12);

"Legal Aid Scheme" means the scheme established under Article 3;

"legal aid" means the provision of legal services under the Legal Aid Scheme;

"legal services" includes legal advice, legal assistance and legal representation;

"Minister" means the Minister for Justice and Home Affairs;

"prescribed" means prescribed by an Order made by the Minister.

2 Duty to provide legal aid

(1) Without prejudice to the generality of –

(a) the oath of advocates of the Royal Court administered under Article 8(6)(a) of the Advocates and Solicitors (Jersey) Law 1997 and set out in the Code of 1771; or

(b) the oath of office of solicitors of the Royal Court administered under Article 8(6)(b) of the Advocates and Solicitors (Jersey) Law 1997 and set out in Schedule 1 to that Law,

an advocate or a solicitor is under a duty to provide legal aid to a person in accordance with this Law.

(2) A failure by an advocate or a solicitor to provide legal aid in accordance with paragraph (1) shall be professional misconduct and a complaint against an advocate or a solicitor alleging professional misconduct on grounds of failure to discharge that

duty shall be made and determined under Part 3 of The Law Society of Jersey Law 2005.

3 Establishment of the Legal Aid Scheme

There shall be established in accordance with this Law, a scheme to be known as the Legal Aid Scheme, for the provision of assistance in Jersey in a case where an individual is in need of legal services.

4 Administration of the Legal Aid Scheme

(1) The Judicial Greffier shall be responsible for the administration of the Legal Aid Scheme.

(2) Subject to paragraph (1) and to such directions as the Judicial Greffier may from time to time determine, the Judicial Greffier may entrust any part of the administration of the Legal Aid Scheme to the Law Society or to such other person as the Judicial Greffier deems appropriate, except for –

(a) the responsibility for meeting payments under the Legal Aid Scheme; and

(b) the requirements imposed on the Judicial Greffier under Article 16.

(3) For the purposes of Article 3(b) of the Freedom of Information (Jersey) Law 2011, information in respect of the administration of the Legal Aid Scheme held by a person to whom an entrustment is made under paragraph (2), shall be information that is held on behalf of the Judicial Greffier.

(4) The administration of the Legal Aid Scheme shall be carried out in accordance with the Legal Aid Guidelines except that, notwithstanding any provision to the contrary in this Law or Regulations or an Order made under this Law or the Legal Aid Guidelines, the Judicial Greffier may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.

5 Resources

(1) The States shall ensure that the Judicial Greffier is provided with sufficient resources for the purpose of meeting payments under the Legal Aid Scheme.

(2) Without prejudice to the application of the Public Finances (Jersey) Law 2019 to the Judicial Greffier's Department, where a function is entrusted to the Law Society under Article 4(2), the Law Society shall, to the extent of those functions, be a States aided independent body for the purposes of Article 14 of the Comptroller and Auditor General (Jersey) Law 2014.[2]

6 Establishment of Legal Aid Guidelines Advisory Committee

(1) There is established a committee to be known as the Legal Aid Guidelines Advisory Committee for the purpose of advising and assisting the Minister in making the Legal Aid Guidelines.

(2) The Legal Aid Guidelines Advisory Committee shall be chaired by the Judicial Greffier who shall be a member of the Legal Aid Guidelines Advisory Committee.

(3) The Legal Aid Guidelines Advisory Committee shall also consist of the following members –

(a) the Attorney General or a person nominated by the Attorney General;

(b) the most senior officer of the Magistrate's Court, or a person nominated by that senior officer;

(c) the Bâtonnier or a person nominated by the Bâtonnier;

(d) the President of the Law Society or a person nominated by the President;

(e) the Chief Executive Officer of the Law Society or a person nominated by the Chief Executive Officer;

(f) two persons nominated by the Bailiff;

(g) two other persons nominated by the Minister who are residents of Jersey and who are not members of the States; and

(h) two members of the States, nominated by the States.

(4) Before nominating a person under paragraph (3), the Judicial Greffier, must first be consulted.

(5) A person shall be nominated under paragraph (3) for such period as may be specified by the person who has nominated him or her.

(6) The Legal Aid Guidelines Advisory Committee may, subject to a quorum of not less than 7 members, meet for the conduct of business, adjourn and otherwise regulate its procedures as it thinks fit.

(7) The Legal Aid Guidelines Advisory Committee shall, before advising and assisting the Minister –

(a) consult the Bailiff and Magistrate;

(b) consult such other persons as it considers appropriate; and

(c) meet (unless it is inexpedient to do so).

(8) The reports of the Legal Aid Guidelines Advisory Committee must be signed by not less than 7 members of the Legal Aid Guidelines Advisory Committee.

(9) The Legal Aid Guidelines Advisory Committee must make a report to the Minister for the purpose of advising and assisting him or her under paragraph (1) no later than 6 months after its establishment under that paragraph.

(10) The States may, by Regulations, amend the members of the Legal Aid Guidelines Advisory Committee listed in paragraph (3).

7 Legal Aid Guidelines

(1) The Minister shall, with the advice and assistance of the Legal Aid Guidelines Advisory Committee, make and publish guidelines for the purpose of providing for the administration of the Legal Aid Scheme, including providing –

(a) for the conditions under which legal aid shall be provided in Jersey;

(b) for the responsibility for meeting the reasonable costs of legal services under the Legal Aid Scheme;

(c) for the financial cost to individuals provided with legal aid; and

(d) information regarding the Legal Aid Scheme to applicants and to advocates and solicitors who provide legal services under the Legal Aid Scheme.

(2) Without prejudice to the generality of paragraph (1), the Legal Aid Guidelines may do any of the following –

(a) subject to Article 9, specify the types of cases that may be eligible or not eligible for legal aid;

(b) provide for different types of cases to be dealt with in accordance with different systems of legal aid under which –

(i) legal services are provided by an advocate or a solicitor who is paid out of public funds for those legal services, or

(ii) legal services are provided by an advocate or a solicitor who is not paid out of public funds but may receive contributions from an applicant in accordance with the provisions made under sub-paragraphs (f), (g), (h) and (i);

(c) specify the factors that may be relevant to providing legal aid, take into account the circumstances in which it is appropriate to provide legal aid, and may, in particular, set out the extent to which the factors ought to reflect the following –

(i) the likely cost of providing the legal services and the benefit which may be obtained by the legal services being provided,

(ii) the appropriateness of applying available resources to provide the legal services, having regard to present and likely future demands for the provision of legal services,

(iii) the importance to an individual of the matters in relation to which the legal services would be provided,

(iv) the nature and seriousness of the act, circumstances or other matter in relation to which the legal services are sought,

(v) the availability to an individual of legal services provided and the likelihood of the individual being able to make use of such legal services,

(vi) if the legal services are sought by an individual in relation to a dispute, the individual's prospects of success in the dispute,

(vii) the conduct of an individual in connection with legal services made available or in connection with an application for such legal services,

(viii) the conduct of an individual in connection with any legal proceedings or other proceedings for resolving disputes about legal rights or duties,

(ix) the public interest, and

(x) an individual's residential status, length of residency, or other connection with Jersey;

(d) set out the system for determining whether legal aid is provided, including provisions in respect of –

(i) obtaining legal opinions, and such other advice as is required to make a determination,

(ii) making provision for the involvement of the Bâtonnier, the Law Society, its employees, or any of its officers in the exercise of functions under this Law, and

(iii) obtaining of an advocate or a solicitor, whether by a system of compulsory assignment of an advocate or a solicitor, or otherwise providing legal representation where an applicant is unable to obtain legal representation;

(e) establish financial eligibility criteria by reference to income and capital, including that of the applicant's household;

(f) make provision for determining whether a case falls within a class for which the advocate or solicitor must be paid by the Judicial Greffier for the provision of legal services;

(g) make provision for determining the rates and amounts of payments for the provision of legal aid,

(h) make provision for the criteria for the payment of financial contributions by persons eligible for legal aid to –

(i) their advocate or solicitor, or

(ii) the Judicial Greffier;

(i) make provision for limiting financial contributions under sub-paragraph (h) to –

(a) a maximum specific payment; or

(b) a maximum periodic payment and for limiting the length of time for which periodic payments are to be made;

(j) make provision in respect of procedures for billing persons provided with legal aid, and the recovery of amounts unpaid;

(k) make provision for legal aid to be conditional on an arbitration agreement (within the meaning given by Article 1 of the Arbitration (Jersey) Law 1998) that disputes as to fees payable for work done shall be subject to arbitration and for the form of that arbitration;

(l) set out the duties of advocates and solicitors in respect of work undertaken in respect of legal aid and for the provision of legal services and other assistance in the administration of the legal aid scheme;

(m) provide for the establishment and maintenance of panels of advocates or solicitors, or both, to undertake particular categories of work;

(n) provide for the waiver of contributions to legal aid, whether payable to the advocate or solicitor or in respect of public funds provided by the States, on the grounds of hardship arising from a change in financial circumstances since the legal services were provided;

(o) provide for the review, revocation and revision of grants of legal aid;

(p) impose requirements for an applicant to provide information to the Judicial Greffier;

(q) impose requirements for an applicant to co-operate with the advocates or solicitors providing legal services under this Law, and impose requirements as to the conduct of the applicant in respect of claims supported by legal aid;

(r) impose conditions for the renewal of applications;

(s) impose conditions for the making of payments whether directly or by way of the advocate or solicitor assigned to the client for the purposes of meeting disbursements, such as the obtaining of records or payment of expert witnesses;

(t) set out conditions whereby amounts paid under the Legal Aid Scheme for the benefit of an applicant will be recoverable under Article 10(3);

(u) provide for any matters of procedure to be specified by a practice direction published by the Judicial Greffier.

(3) The Legal Aid Guidelines may do any of the following –

(a) make different provisions, both in terms of the tests for eligibility and the procedures to be followed, depending on when in the course of litigation an application is made;

(b) make particular provision (which may include the complete exclusion from eligibility) in respect of companies, partnerships and claims brought in respect of businesses;

(c) provide for such other matters as are necessary or expedient.

(4) In preparing the Legal Aid Guidelines, the Minister shall publish the Minister's proposals and seek representations from the public.

(5) The manner in which –

(a) the Minister's proposal for the Legal Aid Guidelines shall be published; and

(b) representations may be provided by members of the public,

shall be prescribed.

(6) The Minister shall consider the representations that he or she has received in preparing the Legal Aid Guidelines.

(7) If the Minister makes Legal Aid Guidelines, before publishing the Legal Aid Guidelines –

(a) the Minister shall lay the Legal Aid Guidelines before the States;

(b) the Minister shall, in the Legal Aid Guidelines, specify the date that they are to take effect, being at least 4 weeks after they are laid before the States.

(8) A member of the States may, within 4 weeks after the Legal Aid Guidelines are laid before the States under paragraph (7), lodge a proposition requesting that the States annul them.

(9) The Legal Aid Guidelines shall not come into effect during any period within which a proposition requesting their annulment under paragraph (8) is outstanding.

(10) If the proposition requesting that the States annul the Legal Aid Guidelines under paragraph (8) –

(a) is approved by the States, the Legal Aid Guidelines shall be annulled and shall not come into effect; or

(b) is withdrawn, the Legal Aid Guidelines shall come into effect on the date specified in the Legal Aid Guidelines and shall be published in a way that makes them available to the public.

(11) The Minister may at any time revoke any Legal Aid Guidelines published under this Article.

(12) The Minister may, from time to time, revise the Legal Aid Guidelines made under this Article and a reference to the Legal Aid Guidelines includes a reference to the revised Legal Aid Guidelines.

8 Transfer of cases

(1) The Legal Aid Guidelines may provide for the transfer of different types of cases between the different systems of legal aid referred to in Article 7(2)(b).

(2) Without prejudice to the generality of paragraph (1), the Legal Aid Guidelines may, in particular, provide for the transfer of cases in respect of legal services referred to

in Article 7(2)(b)(ii) if there are insufficient advocates or solicitors to support the system of legal aid under which those legal services are provided.

9 Exceptional circumstances

The Legal Aid Guidelines must make provision for legal aid to be provided in exceptional circumstances which shall include cases in respect of which compliance with –

(a) the Human Rights (Jersey) Law 2000 or any other enactment;

(b) obligations arising under Article 2 of the European Union (Jersey) Law 1973; or

(c) obligations arising under international obligations,

makes it necessary that such legal aid be provided.

10 Contributions

(1) Where funding for legal aid is by way of public funds, the Judicial Greffier may, in accordance with the Legal Aid Guidelines, determine that such funding shall be subject to contributions by the individual provided with such legal aid.

(2) An individual provided with legal aid shall not raise any issue of law or fact as regards the duty to pay contributions if it concerns an issue that could have been raised under appeal rights given by Regulations made under Article 17.

(3) Contributions recoverable from an individual provided with legal aid under this Law shall be recoverable as a civil debt by the Treasurer of the States.

(4) The determination by the Judicial Greffier of contributions, and a certificate by the Judicial Greffier of amounts payable shall be sufficient evidence of the civil debt referred to in paragraph (3).

11

[not in force]

12 Restriction on disclosure of information

(1) Information received by any person in connection with the person's functions or any other person's functions under this Law shall not be disclosed by that person except –

(a) to another person acting in the execution of this Law so far as may be necessary for the proper discharge of the functions of that person under this Law;

(b) as may be required for any purpose prescribed;

(c) for the purposes or in the course of any legal proceedings.

(2) Any person who discloses information in contravention of paragraph (1) shall be guilty of an offence and liable to a fine.

(3) It is a defence for a person charged with an offence under this Article to prove that he reasonably believed –

(a) that the disclosure was lawful; or

(b) that the information had already lawfully been made available to the public.

13 Legal professional privilege

(1) For the purpose of determining if legal professional privilege applies, any information provided by an applicant to any person for the purpose of determining entitlement to legal aid shall be treated as if it had been provided in a client and lawyer relationship.

(2) It shall not be a breach of legal professional privilege for an applicant's advocate or solicitor to provide otherwise privileged information to a person carrying on a function under this Law.

(3) Paragraph (2) shall apply at any time during the client and lawyer relationship and after the end of such a relationship.

14 Protection from liability for damages, costs and loss

(1) This Article applies to any person who carries out a function under this Law (including any person who assists in carrying out a function under this Law or carries out a function under an entrustment pursuant to Article 4(2)) other than a person carrying out a professional obligation in a client and lawyer relationship.

(2) Subject to paragraph (3), a person to whom this Article applies shall not be liable –

(a) in damages;

(b) for consequential loss; or

(c) for costs in legal proceedings,

in respect of any act done in the discharge or purported discharge of that person's functions under, or authorized by or under, this Law unless it is shown that the act was done in bad faith.

(3) Paragraph (2) shall not apply so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.

(4) The Minister may by Order exclude any type of damages, costs or consequential loss from the application of this Article.

15 Annual report and other reports

(1) The Judicial Greffier shall prepare an annual report in respect of the Legal Aid Scheme and provide the report to the Minister as soon as reasonably practicable (and in any case no later than 4 months) after the end of the financial year to which the report relates.

(2) An annual report referred to in paragraph (1), shall contain such matters as the Minister may require.

(3) The Judicial Greffier may, on his or her own motion or at the request of the Minister, provide an interim report, or a report on specific matters arising in respect of the Legal Aid Scheme, to the Minister.

(4) The Judicial Greffier shall use his or her best endeavours to exclude from a report referred to in paragraph (1) or (3), any matter relating to a person mentioned, or identifiable from information contained in, the report if the Judicial Greffier considers that the publication of such matter would or might seriously and prejudicially affect the person's privacy, reputation or commercial interests, unless –

(a) the person has consented, prior to the provision of the report, to publication of the matter in the report; or

(b) the Judicial Greffier considers that the importance of the public interest in the matter outweighs the effect of publication on the person's privacy, reputation or commercial interests.

(5) The Minister shall present an annual report or interim report provided under paragraph (1) or (3) to the States as soon as is reasonably practicable.

16 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law.

17 Regulations

(1) The States may by Regulations make any provision as the States think fit for the purposes of carrying this Law into effect.

(2) Without limiting the generality of paragraph (1), Regulations made under this Law may –

(a) provide for appeals to a court or tribunal against decisions made pursuant to this Law;

(b) modify the application, in relation to an appeal under the Regulations, of a Law relating to the conduct of appeals by a body or tribunal to which an appeal under the Regulations may be made;

(c) provide for recovery of the amount paid or awarded for legal aid;

(d) provide for administrative expenses to be payable to members of a body or tribunal referred to in sub-paragraph (a) or (b);

(e) create offences for contravention of the Regulations and specify penalties for such offences not exceeding imprisonment for 2 years and a fine;

(f) amend Articles, 4, 5(2), 6, 7(4) to (11), 8, 10, 11, 12 and 15;

(g) make such consequential, incidental, supplementary and transitional provisions as may appear to be necessary or expedient, including provisions making amendments to any other enactment as appear to the States to be expedient –

(i) for the general purposes, or any particular purpose, of this Law,

(ii) in consequence of any provision made by or under this Law, or

(iii) for giving full effect to this Law or any provision of it.

18 Orders

(1) The Minister may by Order prescribe any matter which is to be prescribed under this Law.

(2) An Order made under this Law may make different provisions for different cases and contain such incidental, supplemental and transitional provisions as appear to the Minister to be necessary or expedient.

(3) The Minister shall consult the Judicial Greffier and the Law Society before making any Order under this Law.

19 [3]

20 [4]

21 [5]

22 [6]

23 Citation and commencement

This Law may be cited as the Access to Justice (Jersey) Law 2019 and shall come into force on such day or days as the States may by Act appoint, and different dates may be appointed for different provisions and different purposes of this Law.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement	◦Projet No (where applicable)
Access to Justice (Jersey) Law 2019	L.11/2019	22 July 2021 – except Articles 2 to 5 and 10 to 23 (R&O.91/2021) 1 April 2022 – all remaining provisions except Article 11 (R&O.91/2021 and R.191/2021) Not in force – Article 11	P.23/2019
Criminal Procedure (Consequential Amendments – Access to Justice) (Jersey) Regulations 2022	R&O.33/2022	1 April 2022	P.4/2022
States of Jersey (Transfer of Justice Functions – Chief Minister to Justice and Home Affairs) Order 2023	R&O.76/2023	21 September 2023	

◦Projets available at statesassembly.gov.je

Table of Endnote References

[1] *Article 1* — *amended by R&O.76/2023*
[2] *Article 5(2)* — *revised on 11 December 2024 by Law Revision Board item 2024/6*
[3] *Article 19* — *spent, omitted*
[4] *Article 20* — *spent, omitted*
[5] *Article 21* — *substituted by R&O.33/2022, spent, omitted*
[6] *Article 22* — *deleted by R&O.33/2022*