



SUPPLEMENT No. 2
TO
THE SOVEREIGN BASE AREAS GAZETTE
No. 1339 of 26th July 2004
LEGISLATION

ORDINANCE 16 OF 2004

AN ORDINANCE
TO PROVIDE FOR LEGAL AID

P. T. C. Pearson CBE
ADMINISTRATOR

23rd July 2004.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the Legal Aid Ordinance 2004.

Short title.

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

Interpretation.

“advocate” means a person entitled to practise as an advocate in the Areas in accordance with the provisions of the Advocates Ordinance 1962;

“Court” means the Senior Judge’s Court, the Judge’s Court and the Juvenile Court and includes the Compensation Assessment Tribunal and the Industrial Disputes Tribunal

Ordinance
13/1962 as
amended by
Ordinances
24/1963, 5/1975,
12/1986, 18/1991
and 4/2002.

“legal aid” has the meaning given in section 3(1);

“representation” means representation for the purposes of proceedings and includes the assistance which is usually given by a representative in the steps preliminary or incidental to any proceedings and advice and assistance as to any appeal.

3. —(1) For the purposes of this Ordinance “legal aid” means the provision to any person of legal advice, assistance or representation, payment for which is made from funds provided by the Administration.

Legal aid.

(2) Subject to such conditions as may be imposed by or under this Ordinance, legal aid may be provided to any person by the Court in relation to any proceedings brought against him which, whether or not they are described as criminal proceedings, could result in his being sentenced to any term of imprisonment.

(3) An application for legal aid shall be made in accordance with Rules of Court made under section 11(1) below.

(4) Where a Court grants an application for legal aid made under subsection (3) above, it shall issue the applicant with a legal aid certificate.

Advocate appointed by the Court.

4. Without prejudice to section 64 of the Criminal Procedure Ordinance, where the Court is of the opinion that it is in the interests of justice that a person who is not legally represented and who has not applied for legal aid should be legally represented, it may appoint an advocate to act for that person and any advocate so appointed shall be treated as if he were providing his services pursuant to a legal aid certificate.

Right of a suspect to free legal advice and assistance on interview under caution.

5. —(1) Without prejudice to the provisions of the Criminal Procedure Ordinance with regard to the interrogation of suspects, where a person is to be interviewed under caution on suspicion of his having committed an offence for which on conviction he could be sentenced to a term of imprisonment of longer than one year, he must be informed before the interview commences of his right to have an advocate present at the interview to advise and assist him.

(2) A person who elects to have an advocate present when he is to be interviewed as described in subsection (1) above, shall be informed that he may select any advocate to advise and assist him, whether or not the advocate of his choice is included in the list of advocates prepared in accordance with section 9 below, but if the person concerned wants the services of the advocate advising and assisting him at the interview to be paid for from funds provided by the Administration, the fee payable to the advocate will be limited to such amount as is prescribed by Rules of Court made under section 11(2)(e) below.

Applications and certificates for legal aid.

6. —(1) In considering an application for legal aid under section 3 above, the Court shall have regard to each of the following matters —

- (a) the applicant's income, savings and financial obligations and his willingness to make full and frank disclosure of these;
- (b) the seriousness or complexity of the proceedings or other matter to which the application relates;
- (c) whether advice, assistance and representation in relation to the matter to which the application relates is available to the applicant from any other source without payment;
- (d) any other matter appearing to the Court to be relevant to the application.

(2) Any payment made pursuant to a legal aid certificate shall be made by the Court directly to the person who provided the services for which the payment is made.

(3) A person to whom a legal aid certificate has been granted shall not make any payment whatsoever to or for the benefit of any person for any services which have been or are to be paid for pursuant to the legal aid certificate.

(4) Where the Court has reasonable grounds to believe that the circumstances upon which a legal aid certificate was granted were not as the Court was given to believe them to be, or that those circumstances have so changed that it has ceased to be appropriate to continue providing legal aid to the person concerned, the legal

aid certificate may be revoked, but without prejudice to the right of any person to be paid for services provided by him pursuant to the legal aid certificate at a time before the certificate was revoked.

(5) Where a person who has been granted a legal aid certificate is awarded by the Court any costs or expenses against another party to the proceedings in relation to which the legal aid certificate was granted, the person concerned shall repay the amount paid under the legal aid certificate to the extent of any costs or expenses actually received.

7. The fact that an advocate is being paid for his services pursuant to a legal aid certificate shall not affect the normal relationship that subsists between a client and his advocate.

Legal aid does not affect the client and advocate relationship.

8. —(1) A person who has been granted a legal aid certificate or who is to have an advocate appointed under section 4 above to represent him, may select any advocate included in the list described in section 9 below to provide him with legal services provided that —

Selection of advocate.

- (a) the list indicates that the advocate selected is willing to deal with matters of the kind involved in the case in question;
- (b) the advocate is not precluded from providing his services to that person on any grounds relating to the code of professional conduct and ethics applicable to advocates.

(2) If for any reason a person declines to make a selection under subsection (1) above the Court may appoint such advocate as it considers appropriate.

9. —(1) The Attorney General and Legal Adviser shall consult the Association of Pancyprrian Lawyers for the purpose of preparing a list containing the name of each advocate who is willing to provide his services —

List of advocates.

- (a) pursuant to a legal aid certificate granted under this Ordinance or;
- (b) in circumstances such as are described in section 5 above (advising and assisting a suspect being interviewed).

(2) The list prepared under this section shall include for each advocate the particular matters mentioned in sections 3(2) and 5 in relation to which he is willing to provide his services.

10. —(1) Any person who, for the purpose of obtaining legal aid for himself or for any other person, knowingly makes any untrue statement or declaration, either orally or in writing, or for such a purpose withholds or conceals any material particular relating to an application by him or any other person for legal aid, is guilty of an offence and is liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £450 or to both such penalties.

Offences and penalties.

(2) Where a person is convicted of an offence under subsection (1) above, the Court before which he is convicted may order him to repay the whole or part of any amount paid by way of legal aid by reason of the offence.

11. —(1) The Administrator may, with the advice and assistance of the Senior Judge, make such Rules of Court as he considers necessary or expedient for the more effective application of this Ordinance.

Rules of Court and regulations.

(2) Without prejudice to the generality of subsection (1) above, Rules of Court under this section may provide for —

- (a) the form and manner of making an application for legal aid;
- (b) the information and documents to be submitted in support of such an application;
- (c) the form of declaration required in support of such an application;
- (d) the form of a certificate granting legal aid;
- (e) the amounts payable for particular descriptions of legal services provided pursuant to such a certificate.

(3) Where the Administrator is of the opinion that in order for the provisions of this Ordinance to be made to apply more effectively it is necessary or expedient to make further supplementary provisions which are not appropriate for inclusion in Rules of Court, he may make such regulations under this section as he considers to be necessary or expedient.

(4) Rules of Court and regulations made under this section shall be published in the Gazette.

Commencement.

12. This Ordinance shall come into force on such day as the Administrator shall appoint by a notification published in the Gazette.

23rd July 2004
(128/89)

J. E. Stainton,
Acting Chief Officer
