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LEGAL AID (AMENDMENT) REGULATION 2000

(Made by the Chief Executive in Council under section 28
of the Legal Aid Ordinance (Cap. 91))

1. Commencement

This Regulation shall come into operation on the day appointed for the commencement of the Legal Aid (Amendment) Ordinance 2000 (of 2000).

2. Application for certificate

Regulation 3 of the Legal Aid Regulations (Cap. 91 sub. leg.) is amended by repealing paragraph (2) (c) and substituting -

“(c) the financial resources of the applicant.”.

3. Issue of certificate

Regulation 5 is amended -

- (a) in paragraph (4), by repealing “income or financial resources, disposable income and disposable capital” and substituting “financial resources”;
- (b) in paragraph (7), by repealing “and, in the case of legal aid to be granted under the Supplementary Legal Aid Scheme, also pay a fee of \$1,000”;
- (c) by repealing paragraph (8);
- (d) by repealing paragraph (9) substituting -

“(9) When an applicant has complied with such of the provisions
of paragraph (7) as may be relevant to his case, the Director shall

issue a certificate in the form determined by the Director.”;

- (e) in paragraph (10), by repealing “(3), (4), (5) or (8)” and substituting “(3), (4) or (5)”.

**4. Power to amend on change of circumstances
or contribution**

Regulation 6B is amended by repealing “6A or 8(3)” and substituting “6A, 8(2), 8(2A) or 8(3)”.

5. Increase of contribution under certificates

Regulation 6C is amended by adding “, or 5AA” after “section 5”.

6. Discharge and revocation of certificates

Regulation 8 is amended -

- (a) in paragraph (2) -

- (i) in subparagraph (e) (ii), by repealing “receiving” and substituting “bankruptcy”;

- (ii) by adding -

“(fa)if he is satisfied that the financial resources of an aided person exceed the limits prescribed in section 5 or 5A of the Ordinance:

Provided that a certificate shall not be discharged under this subparagraph until the aided

person has been given an opportunity to show cause why the certificate should not be discharged;”;

(b) by adding -

“(2A) Notwithstanding paragraph (2) (fa) and without prejudice to regulation 6B, the Director need not discharge a certificate by reason of the circumstances referred to in that paragraph if he is satisfied that it is appropriate not to do so.”;

(c) by repealing paragraph (3) and substituting -

“(3) The Director shall discharge a certificate if he considers that the aided person no longer has reasonable grounds for taking, defending or being a party to the proceedings or, as the case may be, that it is unreasonable in the particular circumstances for him to continue to receive legal aid:

Provided that a certificate shall not be discharged under this paragraph until the aided person has been given an opportunity to show cause why the certificate should not be discharged.”.

7. Effect of discharge and revocation

Regulation 9 is amended -

(a) by repealing paragraph (5A) (b) and substituting -

“(b) where aid was granted under the Supplementary Legal Aid Scheme,
by the

amount of any interim contribution paid under section 32 of the Ordinance and the application fee paid under regulation 3(3).”;

- (b) in paragraph (a) of the proviso to paragraph (10), by repealing “8(3) (b)” and substituting “8(3)”.

8. Conduct of proceedings by solicitors

Regulation 12(2) is amended -

- (a) by repealing “or” at the end of paragraph (e);
- (b) by repealing the comma at the end of paragraph (f) and substituting “; or”;
and
- (c) by adding -

“(g) to represent the aided person at an inquest into the death of a person under the Coroners Ordinance (Cap. 504) which gives rise to the proceedings to which the certificate relates.”.

9. Regulation added

The following is added -

“15B. Category of persons who may be granted legal aid in coroners inquests

- (1) For the purposes of section 28(2) and paragraph 3 in Part I in Schedule 2 of the Ordinance and the grant of legal aid to the family of a deceased person in respect of an inquest into deaths under the Coroners Ordinance (Cap. 504), the Director may approve the grant of legal aid to one and, only one, person being -

- (a) the surviving spouse or the surviving partner or partners to a union of concubinage entered into before 7 October 1971;
- (b) the children of the deceased including any children born of a union of concubinage entered into before 7 October 1971;
- (c) the father or mother of the deceased; or
- (d) the brother or sister of the deceased.

(2) Notwithstanding paragraph (1), where the Director is satisfied that there is no person of any description in that paragraph either in being or, to whom a grant of legal aid can practicably be made, he may for that reason approve the grant of legal aid for the purposes mentioned in paragraph (1) to any other person who is a surviving close relative of the deceased if he is satisfied that it is appropriate to do so.”.

Clerk to the Executive Council

COUNCIL CHAMBER

2000

Explanatory Note

This Regulation amends the Legal Aid Regulations (Cap. 91 sub. leg.) as follows -

- (a) to establish uniform reference to the expression “financial resources” (sections 2 and 3(a));

- (b) to make it clear that if the financial resources of an applicant exceed the financial eligibility limits the Director of Legal Aid need not discharge a legal aid certificate under regulation 8 if he is satisfied that it is appropriate not to do so (section 6);
- (c) to make it clear that interim contributions paid under section 32 of the Ordinance and an application fee paid under regulation 3(3) by a person who is granted aid under the Supplementary Legal Aid Scheme are to be deducted from any amount recoverable by the Director from such person whose certificate has been revoked or discharged (section 7);
- (d) to make provision relating to the grant of legal aid for persons who seek representation at coroners inquests.

2. The other amendments are miscellaneous or consequential.