

Legal Aid (Amendment) Bill 2012
Second Reading approved

3.1. Mr Teare to move:

That the Legal Aid (Amendment) Bill 2012 be read the second time.

The Speaker: Turning to our Order Paper, Item 3, Bills for Second Reading and we begin with the Legal Aid (Amendment) and I call on the Hon. Member for Ayre, Mr Teare, to move.

Mr Teare: Thank you, Mr Speaker.

I am pleased to put before the House today, the Legal Aid (Amendment) Bill 2012 promoted by the Treasury. This Bill seeks to amend the Legal Aid Act 1986.

The Bill comprises 20 clauses and is directed towards four primary objectives, which are (1) to allow Legal Aid to be made available for mediation at the earliest possible stage of a dispute; (2) to provide for greater recovery of Legal Aid costs by way of contributions from the assisted person; (3) to create a Legal Aid Appeals Tribunal; (4) to reconstitute the existing Legal Aid Committee, so that its membership is predominantly made up of non-lawyers and to extend its functions to include oversight of the Legal Aid Certifying Officer and Legal Aid administration.

Mr Speaker, if I may, I would like to provide a summary of the background which has led to this Bill being presented to the House today. In 2002, the Council of Ministers announced the appointment of a Legal Aid Commission with the following terms of reference: to consider the provision of administration of Legal Aid and advice and assistance in the Isle of Man. In 2003, the Commission produced its Report and submitted it to the Chief Minister for consideration. In 2006, Council of Ministers agreed to a phased approach to the implementation of the recommendations contained within the Report of the Legal Services Commission. Between 2006 and 2008, work was undertaken in relation to implementing changes to secondary legislation, and this most notably led to a new financial means test for Civil Legal Aid being introduced in August 2008.

Included in the Report of the Legal Services Commission were also a number of issues, which it was recognised would require amendments to primary legislation and subsequent rafts of new secondary legislation. These issues included the provision of a Legal Aid Appeal Tribunal, the introduction of Legal Aid for mediation proceedings and the introduction of a statutory charge.

In 2009 a Select Committee of Tynwald was appointed to consider a Petition for Redress of Grievance from Mr Stephen Broad. The remit of the Select Committee was extended in 2010 to also consider a Petition for Redress of Grievance from Mr Paul Smith. After taking written and oral evidence, the Select Committee made a number of recommendations within their First and Second Reports, and which included: (1) the introduction of a new board which has a general remit to oversee Legal Aid administration and to review the actions of the Legal Aid Certifying Officer; (2) that another person or body be able to review the actions taken by the Legal Aid Certifying Officer in response to representations made by the opponent of the assisted person; (3) that steps be taken to introduce a statutory charge as soon as possible.

Mr Speaker, the Legal Aid (Amendment) Bill addresses all of these recommendations and issues. In addition, the Bill includes the minor amendment to the Advocates Act 1976 to extend the powers of the Advocates' Disciplinary Tribunal. Hon. Members have received advance copies of the Bill, as well the explanatory notes that provide a paragraph-by-paragraph account of the effect of all the clauses and schedules in the Bill.

Mr Speaker, part 1 – that is clauses 1 and 2 of the Bill – provides for its short title and commencement.

Part 2 amends the Legal Aid Act 1986.

Clause 3 introduces the amendment.

Clause 4 amends section 1 so as to provide Legal Aid for mediation and where it is so given, Legal Aid will be unavailable for proceedings during the currency of mediation. Under the present legislation, there is a perceived lack of clarity as to the point at which Legal Aid is available for mediation. The Bill clarifies this matter and will allow Legal Aid to be granted for mediation at the earliest possible stage in the dispute.

Clause 5 makes changes to section 2 for the purpose of clarification. An application for Civil Legal Aid has to satisfy two main tests: the legal merits test and the financial means test. This amendment is a relatively minor amendment, which arises from the Report of the Legal Services Commission who felt that it was necessary to provide greater clarity in relation to the legal merits test within primary Legal Aid legislation.

Clause 5 also clarifies that a Legal Aid application has to pass both tests.

Clauses 6, 8, 9 and 18 remove all references to the specific Social Security benefits, which presently provide automatic financial qualification for Legal Aid, and instead will enable qualifying benefits to be prescribed by regulations.

Clause 7 is an enabling provision which will allow regulations to be funded, either wholly or in part, and will

also allow for a statutory charge to be introduced in relation to Civil Legal Aid.

Clause 10 amends section 14, so as to require the written consent of the assisted person before any information provided in support of a Legal Aid application can be disclosed to a third party.

Clause 10 also allows disclosure for audit purposes.

Clause 11 amends section 16, so as to introduce specific provision for the appointment of the Legal Aid Certifying Officer and deputy Legal Aid certifying officers.

Clause 12 makes consequential amendments, which include the definition of 'mediation'.

Clause 13 replaces section 23 and provides for a newly constituted Legal Aid Committee to be appointed by the Appointments Commission. The Committee is to consist of five to seven members, of which the majority are to be non-lawyers. The Committee's functions will include overseeing Legal Aid administration and the actions of the Legal Aid Certifying Officer.

Clause 14 inserts section 23A and establishes a Legal Aid Appeals Tribunal. The jurisdiction of the Tribunal will be established within regulations.

Clause 15 replaces section 24 with the provision that includes power for regulations to contain supplemental, incidental, consequential or transitional arrangements.

Clause 16 inserts a definition of 'Appointments Commission'.

Clause 17 inserts transitional provisions to enable regulations to make procedural rules in relation to the Legal Aid Appeals Tribunal, until such time as rules are made under the Tribunals Act 2006.

Part 3 amends other enactments.

Clause 19 adds the Legal Aid appeals tribunal to part 2 of the schedule to the Tribunals Act.

Clause 20 amends section 18 of the Advocates Act 1976, to enable the Advocates Disciplinary Tribunal, where a complaint is proved, to discharge the advocate against whom it was made, either conditionally or unconditionally.

Mr Speaker, having now outlined the broad purpose and contents of the Bill and explained its background, I hope that Members will now give it their full support.

I beg to move that the Legal Aid (Amendment) Bill be read for a second time.

The Speaker: Mr Watterson.

Mr Watterson: Mr Speaker, I am happy to second and reserve my remarks.

The Speaker: Hon. Member, Mr Quirk.

Mr Quirk: Thank you, Mr Speaker.

Can I just thank the Minister for bringing this forward. I know there are a lot of people waiting for more clarity on this particular issue to do with mediation and Legal Aid, and some that get it and some that do not and cause stress. So I wish the Minister a fair wind in this particular Bill.

The Speaker: Does any other Hon. Member wish to speak to the Second Reading?

In that case, Mr Teare, do you wish to reply, sir?

Mr Teare: No, thank you, sir.

The Speaker: I put the motion that the Legal Aid (Amendment) Bill be read for a second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.