

A BILL

entitled

LEGAL AID AMENDMENT ACT 2018

WHEREAS it is expedient to amend the Legal Aid Act 1980 in relation to the assignment of counsel to assisted persons;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Legal Aid Amendment Act 2018.

Repeals and replaces section 12

2 Section 12 of the Legal Aid Act 1980 (choice of counsel etc) is repealed and the following section inserted in its place—

“Assignment of counsel

12 (1) Subject to subsection (2), whenever a certificate is granted by the Committee, the Committee shall direct the Senior Legal Aid Counsel to assign Legal Aid Counsel to the assisted person.

(2) But if the Committee, on the advice of the Senior Legal Aid Counsel, determine that assignment of Legal Aid Counsel in a particular case—

- (a) is not practical;
- (b) is not appropriate to the nature of the proceedings for which the certificate is granted; or
- (c) might give rise to a conflict of interest,

the Committee shall direct the Senior Legal Aid Counsel to assign to the assisted person the external counsel of the assisted person's choice.

(3) Notwithstanding subsection (2), if the assisted person's external counsel of choice—

- (a) is unavailable;

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(b) is unwilling to take on the case; or

(c) refuses to be bound by the Schedule of Fees annexed to the Legal Aid (Scale of Fees) Regulations 1980,

the Committee shall direct the Senior Legal Aid Counsel to assign another counsel to the assisted person.

(4) In this section, “external counsel” means counsel whose name appears on the appropriate roster maintained under section 5.”

Commencement

3 This Act comes into operation on such date as the Minister responsible for legal aid appoints by notice published in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Legal Aid Act 1980 (“the principal Act”) in relation to the assignment of counsel to assisted persons.

Clause 1 is self-explanatory.

Clause 2 repeals and replaces section 12 of the principal Act (choice of counsel etc). The new section 12(1) provides that the Legal Aid Committee will direct the Senior Legal Aid Counsel to assign one of the Legal Aid Counsel to an assisted person whenever a legal aid certificate is granted by the Committee. Subsection (2) provides that only in cases where that is not practical or appropriate to the nature of the proceedings for which the certificate is granted, or might give rise to a conflict of interest, will the Committee direct the Senior Legal Aid Counsel to assign to the assisted person his external counsel of choice. But if the external counsel of choice is unavailable, unwilling to take on the case, or refuses to be bound by the statutory scale of legal aid fees, subsection (3) requires the Committee to direct the Senior Legal Aid Counsel to assign another counsel. Subsection (4) defines “external counsel” for the purposes of this section as counsel on the appropriate roster maintained under section 5 of the principal Act, ie a barrister and attorney in active private practice in Bermuda who is able and willing to represent assisted persons in a particular area of law.

Clause 3 provides for commencement.

