



BERMUDA

FINANCIAL ASSISTANCE ACT 2001

2001 : 24

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WHEREAS it is expedient to make provision for the administration of financial assistance to persons in need.

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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:—

Short title and commencement

1 This Act may be cited as the Financial Assistance Act 2001 and shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

Interpretation

2 In this Act, unless the context otherwise requires—

“able-bodied recipient” means a recipient who is under the age of 65 years and who is not a disabled person;

“Act” includes regulations made thereunder;

“award” means a financial assistance payment awarded under this Act to a recipient;

“Board” means the Board established under section 15;

“dependent” means a person who is financially dependent on his guardian and who—

(a) is under the age of eighteen years and not in full-time employment; or

(b) is under the age of twenty-five years and is either receiving full-time instruction at an educational establishment or is undergoing training for a trade, profession or vocation; or

(c) is a disabled person and is living in the household of his guardian ;

“disabled person” means a person who is suffering from mental or physical disablement;

“financial assistance” means financial benefits given to a recipient under this Act to enable him to maintain a minimum standard of living;

“guardian” in relation to a person who is a dependent, means a person who has the charge of and who is otherwise responsible for the care and well-being of the dependent person;

“Minister” means the Minister charged with responsibility for financial assistance;

“recipient” means a person who is in receipt of an award under this Act.

[Section 2 definition “able-bodied recipient” inserted by 2015 : 17 s. 2 effective 1 April 2015]

Director of Financial Assistance : his functions and duties

3 (1) There shall continue to be a Director of Financial Assistance whose office shall be a public office.

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(2) The Director shall have the functions and shall exercise the powers conferred on him by or under this Act .

(3) The Director shall administer and control in accordance with this Act, all moneys appropriated by the Legislature for the purpose of providing financial assistance to persons in need, and advise the Minister generally on the management and administration of such moneys.

(4) The Director shall as soon as practicable after the end of the Government's financial year make to the Minister and publish in such manner as he thinks appropriate a report of his activities under this Act for that year.

Powers of Director

4 (1) In the exercise of his functions under this Act, the Director may—

- (a) require an applicant for an award or a recipient to provide him with such information and produce such documents as he may specify;
- (b) require such applicant or recipient to attend at such time and place as the Director may require to be examined as to his means and circumstances; and
- (c) enter premises occupied by an applicant for an award or a recipient to make such examination and enquiry as he may deem to be necessary for investigating the circumstances of the applicant or recipient or other member of his household.

(2) The Director may authorise an officer of his department to exercise his powers under this section and shall furnish such officer with an authorisation signed by him.

(3) An officer exercising powers by virtue of an authority under this section shall, if so required, produce evidence of his authorisation.

Government departments to provide information to Director

5 Every Government department shall provide to the Director such information as he may reasonably require in the exercise of his functions under this Act.

Qualified persons

6 A person is qualified to apply for an award under this Act if , and shall not be so qualified to apply unless, on the date of the application, he—

- (a) possesses Bermudian status;
- (b) is the spouse of a person who possesses Bermudian status and has cohabited in Bermuda with that person for a period of not less than three years ending with the date of the application for the award; or
- (c) is a person who is the guardian of a dependent who possesses Bermudian status; and
- (d) is not serving a sentence of imprisonment.

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Application for award

7 (1) A qualified person may apply to the Director for an award under this section in such manner as may be prescribed by regulations.

(2) An application for an award may be withdrawn by notice in writing to the Director at any time before he has determined the application.

Grant and refusal of applications for awards

8 (1) Subject to this section, the Director may on an application duly made in accordance with section 7 and after being provided with all such information and documents as he may reasonably require under that section, grant or refuse an application for an award.

(2) The Director shall not grant an award unless he is satisfied that the applicant fulfills the criteria for eligibility for an award specified in regulations.

(3) Where the Director approves an application, he shall inform the applicant in writing of the amount of the award, the duration of the award, the conditions attached to the award, and of the manner and procedure relating to payments.

(4) In relation to an able-bodied recipient, the Minister may make regulations prescribing—

- (a) the maximum duration of an award; and
- (b) a percentage reduction per annum of the amount of an award which would otherwise be granted under this section.

[Section 8 subsection (4) inserted by 2015 : 17 s. 3 effective 1 April 2015]

Conditions applicable to awards

9 (1) Every award granted under this Act shall be subject to the general conditions specified in subsection (2) and to the special conditions specified by virtue of subsection (3).

(2) It shall be a condition of every award granted under this Act that the recipient—

- (a) shall notify the Director in writing forthwith—
 - (i) of any change in his circumstances which, had he not been in receipt of an award, would disqualify him from applying for an award;
 - (ii) of any change in his circumstances which would make him ineligible to receive an award;
 - (iii) of any change in his address;
 - (iv) of any change in the circumstances of a member of his household who is directly or indirectly benefiting from the award; and
 - (v) of his intention or the intention of any member of his household who is so benefiting, to travel outside Bermuda;

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- (b) shall provide such information and produce such documents as the Director may reasonably require; and
 - (c) shall attend at such time and place as the Director may require to be examined as to his means and circumstances.
- (3) Without prejudice to the conditions specified in subsection (2), the Director may in any particular case impose any one or more of the following conditions—
- (a) require the recipient to register with the Department of Workforce Development and attend any one or more life-skills programmes, as may be specified;
 - (b) require the recipient to attend a course of vocational training or a specified course of vocational training;
 - (c) require the recipient to take up employment or specified employment;
 - (d) require an able-bodied recipient who, after three months of being in receipt of financial assistance, has failed to find employment to complete—
 - (i) 15 hours of community service weekly; or
 - (ii) such shorter time period of community service as the Director may determine in any case where the recipient is attending a programme or training under paragraphs (a) or (b);
 - (e) require the recipient, based on a referral of a financial assistance manager or caseworker, to attend the Bermuda Assessment and Referral Centre for assessment for substance use or abuse and, where the Centre so determines, receive treatment for the substance use or abuse.
 - (f) require the recipient to apply payments received under the award to specified purposes.
- (3A) A recipient who, without reasonable cause, refuses or fails to—
- (a) comply with a special condition imposed by the Director under subsection (3); or
 - (b) complete any programme, training, treatment or community service task allocated that may be required as part of a special condition,

is in breach of the special condition.

(3B) Compliance by the recipient with a special condition imposed under subsection (3) shall be monitored by a financial assistance social worker, who shall submit reports with respect to the monitoring to the Director as the Director may specify in any particular case.

(4) In subsection (3) “specified” means specified by the Director.

[Section 9 subsection (3) repealed and substituted and subsections (3A) and (3B) inserted by 2013 : 22 s. 2 effective 17 July 2013]

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Suspension of award

10 Where it appears to the Director that a question has arisen in relation to a recipient's eligibility for an award or as to whether a determination by the Director in granting an award ought to be reviewed, the Director may suspend the award in whole or in part until that question has been determined by him.

Revocation of award

- 11 (1) The Director may revoke an award made to a recipient under this Act—
- (a) if he is satisfied that the recipient has breached any general or special condition of his award;
 - (b) if any circumstances arise such that, if that person were not a recipient, would cause him to be disqualified for applying for an award under section 6;
 - (c) if the recipient has ceased to fulfill the criteria for eligibility for an award;
 - (d) if the recipient in connection with an application for an award or otherwise, has provided false, misleading or inaccurate information.
- (2) The Director shall revoke an award upon the death of the recipient.

Application after revocation of an award

- 11A (1) A recipient whose award has been revoked by the Director under section 11(1)(a) and (d) may only apply for another award if—
- (a) in the case of the first revocation of an award, not less than 3 months have elapsed from the date the award was revoked;
 - (b) in the case of the second revocation of an award, not less than 6 months have elapsed from the date of the second revocation of the award; or
 - (c) in the case of the third or subsequent revocation of an award, not less than 1 year has elapsed from the date of the latest revocation of the award.
- (2) Where an applicant has had an award revoked under section 11(1)(a) and (d) and applies for a subsequent award in accordance with subsection (1), any subsequent award granted by the Director shall not include arrears for an item of expenditure prescribed in the Schedule to the Financial Assistance Regulations 2004 incurred before the date that the subsequent award is granted.

[Section 11A inserted by 2008:21 s.2 effective 20 June 2008; subsections (1) and (2) amended by 2013 : 22 s. 3 effective 17 July 2013]

Review of awards

12 The Director may, on new facts being brought to his notice, or if he is satisfied that the decision was given in ignorance of, or was based on a misrepresentation as to some

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material fact, review any decision given by him in relation to the award and upon review may revoke or vary the award.

[Section 12 amended by 2008:21 s.3 effective 20 June 2008]

Recovery of overpayment

13 (1) The Director may require a recipient to repay any sum of money improperly paid under an award ('overpayment') as a result of non-disclosure of facts, misrepresentation or for any other cause and may suspend further payments under the award until such sum has been paid.

(2) The Director may waive the overpayment or may require the recipient to pay a reduced amount if he is satisfied that a recipient has exercised due care and diligence to avoid the overpayment.

(3) Where the Director determines that the recovery of an overpayment from a recipient or, in the event of his death, from his estate, would cause undue hardship to the recipient or to a member of his household benefiting directly or indirectly from the award, he may waive the overpayment or may require the recipient or the estate, as the case may be, to pay a reduced amount.

(4) Where any sum is required to be repaid by a recipient under subsection (1), the Director may recover such sum as a debt owing to Government in any court of competent jurisdiction.

Rights of appeal

14 A person aggrieved by a decision of the Director—

- (a) to refuse his application for an award;
- (b) to impose special conditions on his award;
- (c) to suspend in whole or in part his award;
- (d) to vary his award;
- (e) to revoke his award; or
- (f) to require him to repay any sum of money under section 13;

may appeal against the decision to the Board.

Financial Assistance Review Board

15 (1) The Minister shall appoint a Financial Assistance Review Board to hear appeals against decision of the Director brought under section 14.

(2) The Board shall consist of a chairman, a deputy chairman and three other members.

(3) The chairman or in his absence the deputy chairman shall preside at all meetings of the Board.

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(4) The chairman, deputy chairman and the members shall be appointed by the Minister for a term not exceeding three years and may be re-appointed.

(5) During any period of time when the chairman, deputy chairman or member is absent from Bermuda or is for any other reason unable to act, the Minister may appoint another person to act in his place for the period of his absence or inability to act.

Determination of appeals

16 (1) On an appeal under section 14 the Board may confirm, vary or reverse the decision which is the subject of the appeal.

(2) Notice of the Board's determination, together with a statement of its reasons, shall be given to the appellant and to the Director; and, unless the Board otherwise directs, the determination shall come into operation when the notice is given to the appellant and to the Director.

Costs, procedure and evidence

17 (1) The Board may give such directions as it thinks fit for the payment of costs or expenses of the appellant.

(2) The Minister may make regulations with respect to appeals and those regulations may in particular make provision—

- (a) as to the period within which and the manner in which such appeals are to be brought;
- (b) as to the manner in which such appeals are to be conducted, including provision for any hearing to be held in private and as to the persons entitled to appear on behalf of the parties;
- (c) as to the procedure to be adopted;
- (d) for requiring an appellant or the Director to disclose or allow the inspection of documents in his custody or under his control;
- (e) for requiring any person, on tender of the necessary expenses of his attendance, to attend and give evidence or produce documents in his custody or under his control and for authorising the administration of oaths to witnesses;
- (f) for enabling an appellant to withdraw an appeal or the Director to withdraw its opposition to an appeal and for the consequences of any such withdrawal;
- (g) as to any other matter connected with such appeals.

(3) Regulations made under subsection (2) shall be subject to negative resolution procedure.

(4) A person who, having been required in accordance with regulations made under this section to attend and give evidence, fails without reasonable excuse to attend or

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give evidence, shall be guilty of an offence and liable on summary conviction to a fine of \$1,000.

(5) A person who without reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which he has been required to produce in accordance with regulations under this section, or which he is liable to be so required to produce, shall be guilty of an offence and liable on summary conviction to a fine of \$5,000 or to imprisonment for six months or to both.

Award inalienable

18 No moneys payable under an award shall be subject to alienation or transfer by a recipient or to attachment or seizure in satisfaction of any claim against him.

Government not liable to supplier of goods or services

19 The Government is not liable for any payments in respect of goods or services supplied to a recipient .

Death of recipient

20 Where a recipient dies, the Director may pay the award for the month in which the death occurs to a member of his household who has been benefiting directly or indirectly from the award.

Regulations by Minister

21 (1) The Minister may make Regulations for carrying the purposes and provisions of this Act into effect, and, without limiting the generality of the foregoing, may make regulations providing—

- (a) for the criteria for eligibility for awards under this Act;
- (b) for the determination of the financial resources of any person;
- (c) for the time at which the payment of the award shall commence, and the manner and procedure for payment of the award to the recipient;
- (d) that the income or capital of any person is to be taken as exceeding or not exceeding, a prescribed amount;
- (e) for the investigation into applications and into the eligibility of a person to receive an award;
- (f) for the reports to be made and the information to be supplied by or in respect of applicants or recipients;
- (g) for the verification of information that is submitted to the Director;
- (h) for the recovery of the amount of payments to which a recipient was not entitled under an award; and
- (i) for any matter which is authorised or required by this Act to be prescribed by regulations.

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(2) Regulations made under this section shall be subject to the negative resolution procedure.

Repeal and transitional

22 (1) The Housing Allowance Act 1988 is repealed ('the repealed enactment').

(2) Notwithstanding subsection (1), every allowance awarded under the repealed enactment shall continue to be paid in accordance with the provisions of the repealed enactment for a period commencing on the day of commencement of this Act and ending on the first anniversary of that date.

[Assent Date: 8 August 2001]

[Operative Date: 28 May 2004]

[Amended by:

2008 : 21

2013 : 22

2015 : 17]